

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911

No. 18

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
PLAINTIFF IN ERROR,

C. H. ALBERS COMMISSION COMPANY

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS

FILED MARCH 15, 1912

(21,555.)

(21,555.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 173.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

C. H. ALBERS COMMISSION COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

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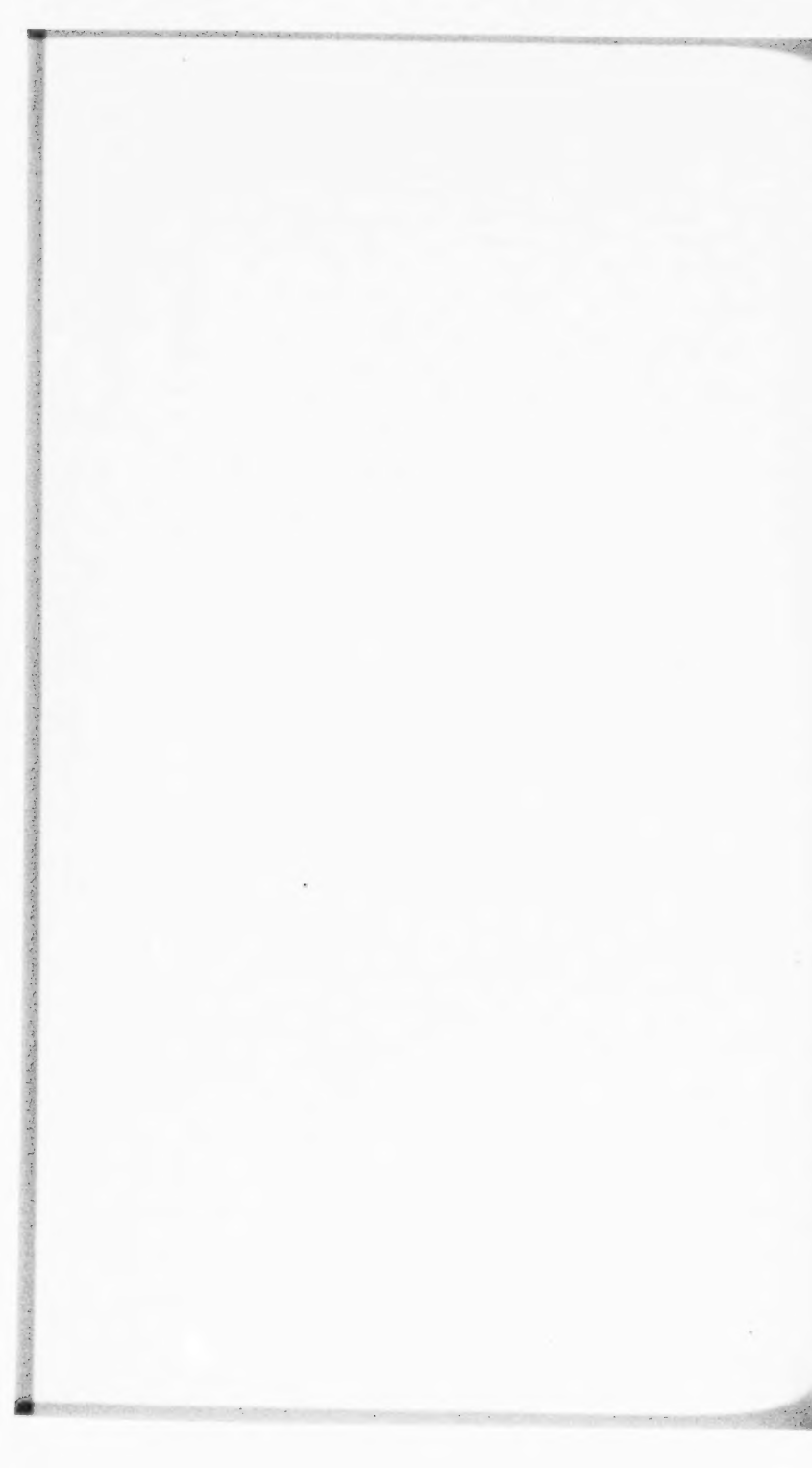
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1 In the Supreme Court of the State of Kansas.

Be it remembered, that on the 26th day of July, A. D. 1907, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, a petition in error and case made attached thereto, together with a waiver of the issuance and service of summons in error in the case entitled The Kansas City Southern Railway Company, plaintiff in error, v. C. H. Albers Commission Company, defendant in error, and numbered therein 15627, which petition in error and case made attached and waiver of summons in error are in the words and figures as follows, to-wit:

2 Oct. 2, 1908.

Permission is hereby granted to the plaintiff in error to withdraw this record temporarily for the purpose of having the clerk of the District Court of Crawford County place thereon his filing mark and also to have the official stenographer of said district court to attach his certificate to the case made.

SILAS PORTER,
Justice of the Sup. C't.

3 In the Supreme Court of the State of Kansas.

15627.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY (a Corporation),
Plaintiff in Error,

vs.

C. H. ALBERS COMMISSION COMPANY (a Corporation), Defendant
in Error.

Petition in Error.

Filed Jul- 26, 1907. D. A. Valentine, Clerk Supreme Court.

Comes now the Kansas City Southern Railway Company, a corporation, plaintiff in error, and alleges and shows to the Court that on to-wit, the 7th day of January, A. D. 1907, the said C. H. Albers Commission Company, a corporation, defendant in error, obtained a judgment in the District Court of Kansas, within and for the County of Crawford, sitting at Pittsburg, Kansas, by the consideration of the said Court, for the sum of thirteen thousand one hundred and eighty dollars and forty three cents (\$13,180.43) and costs of suit, against said, The Kansas City Southern Railway Company, a corporation, plaintiff in error, in a certain action then pending in said District Court wherein the said C. H. Albers Commission Company, a corporation, was plaintiff, and Robert L. Forrester and Joseph M. Forrester, co-partners, composing the firm of

Forrester Brothers, were defendants and the Kansas City Southern Railway Company, a corporation, was garnishee.

An original case-made of the pleadings and proceedings and said judgment in said action in said District Court is hereunto attached and made a part of this petition in error.

The said The Kansas City Southern Railway Company, a corporation, plaintiff in error, alleges that there is error in 4-6 said proceedings and judgment and assigns error thereto as follows:

1. That said Court erred in over-ruling the motion of said, The Kansas City Southern Railway Company, for a new trial as set forth in the journal entry at page three hundred and thirty-four (334) of the said case-made hereto attached.

2. That said Court erred in overruling the demurrer to the evidence produced by C. H. Albers Commission Company as set forth in the journal entry at page one hundred and fifty-two (152) of the case-made hereto attached.

3. That said Court erred in the admission of the evidence of said C. H. Albers Commission Company, to which the said, The Kansas City Southern Railway Company at the time objected.

4. That the said Court erred in ruling out the evidence offered by the said, The Kansas City Southern Railway Company, to which the said C. H. Albers Commission Company objected, to which rulings of the Court, this said plaintiff in error, at the time excepted and excepts.

5. That said judgment was given for said C. H. Albers Commission Company when it should have been for the said Kansas City Southern Railway Company.

6. That the said District Court erred in holding that it had jurisdiction over the subject matter of the action, inasmuch as it clearly appeared that the same was an action under the act of Congress known as the Interstate Commerce Act, and that jurisdiction of this cause is either in the Federal Court of the proper district, or in the Interstate Commerce Commission. The court erred in so holding and in not, on that account, dismissing this suit and refusing to enter judgment therein.

7. That the court erred in other respects which will more fully appear from the case-made hereto attached and made part hereof.

Wherefore, plaintiff in error prays that said judgment be reversed and that it be restored to all things lost thereby.

CYRUS CRANE,

W. J. WATSON,

Attorneys for Plaintiff in Error.

Service acknowledged and issue of summons waived this 23rd day of July, 1907.

J. M. WAYDE,

Attorney for Defendant in Error.

Filed Jul- 26, 1907. D. A. Valentine, Clerk Supreme Court.

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Filed Jul- 26, 1907.

D. A. VALENTINE,
Clerk Supreme Court.

8 In the District Court of Crawford County, Kansas, Sitting at
Pittsburg.

C. H. ALBERS COMMISSION COMPANY, a Corporation, Plaintiff,
vs.

ROBERT L. FORRESTER and JOSEPH M. FORRESTER, Co-partners,
Composing the Firm of Forrester Brothers, Defendants; The
Kansas City Southern Railway Company (a Corporation), Gar-
nishee.

Case-made.

Filed Jul- 26, 1907. D. A. Valentine, Clerk Supreme Court.

Be it remembered, that on the 7th day of April, 1902, the plaintiff
above named filed its petition, and affidavit in garnishment, preceipe
for summons in garnishment, and preceipe for summons; and that
summons was issued for the defendants, and also garnishment sum-
mons was issued against the garnishee, in the above entitled action,
in the office of the Clerk of the District Court of Crawford County,
Kansas, sitting at Pittsburg, copies of the same being in words and
figures as follows, to-wit:—

9 STATE OF KANSAS,
County of Crawford, ss:

In the District Court in and for Crawford County, State of Kansas,
Sitting at Pittsburg.

C. H. ALBERS COMMISSION COMPANY, a Corporation, Plaintiff,
vs.

ROBERT L. FORRESTER and JOSEPH M. FORRESTER, Co-partners,
Composing the Firm of Forrester Brothers, Defendants.

Petition.

Now comes plaintiff and for cause of action states that it is and at
the times hereinafter mentioned was a corporation, duly organized
and existing under and by virtue of the laws of the State of Missouri,
with its principal place of business in the City of St. Louis, in the
State of Missouri; that defendant, Robert L. Forrester is, and at the
times hereinafter mentioned was, a resident of the state of Missouri;
that defendant Joseph M. Forrester is, and at the times hereinafter
mentioned was, a resident of the State of Illinois, and that said
Robert L. Forrester, and Joseph M. Forrester, are, and at the times
hereinafter mentioned were co-partners in business under the firm
name and style of Forrester Brothers, doing business in the City of
St. Louis, in the State of Missouri, as dealers in grain.

Plaintiff states further that heretofore to-wit, between January 1st,
1902, and the date of the filing of this suit, plaintiff and the defend-
ant firm of Forrester Brothers had business dealings with one an-

other, in which plaintiff at sundry different times at the instance and request of defendant firm, Forrester Brothers, advanced and paid over to said firm certain sums of money aggregating in all the sum of Eleven Thousand Dollars, exclusive of all credits, set-offs and counter-claims, to which the defendant firm may be entitled, and that, to-wit, said sum of Eleven Thousand Dollars is justly due and owing plaintiff from the defendants, together with interest thereon from the several payments, all of which will more fully appear from an itemized statement of the account of said moneys, which is herewith filed, marked "Exhibit A" and made part of this petition.

Plaintiff further states that it has demanded payment of said sum of the defendants, but that defendants, notwithstanding such demand, have wholly failed and refused to pay the same or any part thereof and that said whole sum of Eleven Thousand Dollars still remains due owing and payable to this plaintiff; wherefore plaintiff prays judgment for said sum of Eleven Thousand Dollars against the defendants together with interest thereon from the respective dates on which said sums were advanced and paid to defendants by plaintiff as will more fully appear from the account herewith filed and marked "Exhibit A", and for the costs of this suit.

J. M. WAYDE,
PAUL F. COSTE,
Attorneys for Plaintiff.

Endorsed on back: #161. C. H. Albers Commission Co. vs. Forrester Bros. Petition. Filed Apr. 7, 1902. Frank O'Reilly, Clerk Dist. Court.

11 STATE OF MISSOURI,
City of St. Louis, ss:

C. H. Albers, being first duly sworn, on his oath, deposes and says that he is the duly authorized agent of said plaintiff in the above entitled action, and that he is president of said plaintiff, and that the account hereto attached is correct and that there is due the said plaintiff from said defendant on said account the sum of Ten Thousand Three Hundred Thirty-three 72/100 (\$10,333.72) Dollars, after giving said plaintiff credits for all payments, set-offs and counter claims; that the facts with reference to said account are within the knowledge of said affiant, and that said plaintiff is a non-resident of the State of Kansas.

C. H. ALBERS.

STATE OF MISSOURI,
City of St. Louis, ss:

I hereby certify that the above and foregoing affidavit was signed in my presence and sworn to before me, a Notary Public, within and for the City of St. Louis, Missouri, at my office in the City of St. Louis, and State of Missouri, on this 19th day of April, A. D. 1902.

HENRY H. OBERSCHELP,
Notary Public.

[SEAL.]

My commission expires on fourth day of November, 1902.

"EXHIBIT A."

400 CHAMBER OF COMMERCE, ST. LOUIS, *March 6th, 1902.*

DR.

Messrs. Forrester Bros. in Account with C. H. Albers Commission Co.

Cz.

1902.		To cash.....	\$370.			Feb. 28.	By balance rend.....	\$18,420.66
Mar. 1,	"	loss 1150 C.	3186.15			Mar. 1,	" gain 30 C.	42.10
"	"	" 70 "	2609.35			"	" " 95 O.	1739.13
"	"	" priv.	55.			3.	" " 15 W.	33.33
3,	"	loss 135 C.	6304.12			"	" " 120 C.	2749.45
"	"	" 25 W.	344.58			"	" 81-5 Feb'y.	202.50
"	"	" 30 "	1471.02			4.	" gain 80 O.	430.44
"	"	" 60 C.	453.36			"	" " 130 C.	340.94
"	"	" 35 "	21.67			"	" " 325 C.	1121.07
"	"	" 65 "	3273.28			"	" 63-5 Mar.	157.50
"	"	" 15 O.	247.44			6.	" gain 20 O.	182.65
"	"	cash.....	170.			"	" balance.....	10,333.72
"	"	loss 25 R. & C. C.	1301.50					
"	"	" 25 W. & C. C.	1139.35					
4,	"	" 60 C.	253.22					
"	"	" 170 C.	1825.79					
"	"	" 120 C.	968.94					
"	"	" 155 C.	3709.36					
"	"	" 150 C.	6264.30					
"	"	" 80 C.	1754.80					
"	"	" 20 C. 2/19.....	30.26					
1902.								
Mar. 6,	To balance.....		35,753.49					35,753.49
	To balance.....		10,333.72					

13 It is understood and agreed that where the caption is omitted in any pleading or paper appearing herein, the caption is and should be the same as the title of this case-made.

14 Thereafter and on the same day, to-wit, April 7th 1902, plaintiff filed affidavit in garnishment, of which the following is a copy:

(Omitting the Caption.)

STATE OF KANSAS,
Crawford County, ss:

J. M. Wayde, of lawful age, being first duly sworn, upon his oath deposes and says that he is one of the attorneys for the plaintiff in the above entitled action; that said plaintiff is a non-resident corporation; that said defendants are both non-residents of the state of Kansas; that said plaintiff has brought its action against said defendants to recover damages upon contract in the sum of eleven thousand dollars with interest thereon at the rate of six per cent per annum from the several dates stated in the petition of said plaintiff, filed in this case to which reference is hereby made; that the amount of said plaintiff's claim against said defendants herein, over and above all offsets, is the sum of eleven thousand dollars and interest; said affiant states that he verily believes that the Kansas City Southern Railway Company, a corporation, and doing business within said county, is indebted to said defendants and has property real and personal in its possession and under its control belonging to said defendants and that said defendants have not property liable to execution sufficient to satisfy said plaintiff's demand against them and that the indebtedness and property of said defendants in the hands of said railway company to the best of the knowledge and belief of said affiant, is not by law exempt from seizure or sale upon execution, that said defendants claim a joint and several liability against said railway company.

J. M. WAYDE.

Subscribed and sworn to before me this 7th day of April, A. D. 1902.

FRANK O'REILLY,
Clerk of the District Court,

[SEAL.]

By FRANK ROBINSON,
Deputy Clerk.

Endorsed: #161. C. H. Albers Com. Co. vs. Forrester Bros. Affidavit for Garnishment. Filed Apr. 7, 1902. Frank O'Reilly, Clerk Dist. Court.

15 Thereafter, and on the 26th day of April, 1902, Garnishee filed *their* affidavit herein, as follows:

(Omitting Caption.)

STATE OF MISSOURI,

*County of Jackson, ss:**Affidavit of Garnishee.*

Cyrus Crane, being first duly sworn, says that he is attorney and agent for The Kansas City Southern Railway Company, garnishee in the above entitled cause; that said garnishee is a corporation, and affiant makes this affidavit for it and on its behalf; that on the 7th day of April, 1902, said garnishee was served with a garnishee's summons in the above entitled action; that said garnishee was then and is now in no manner and upon no account indebted or under liability to the defendants, Robert L. Forrester and Joseph M. Forrester, co-partners composing the firm of Forrester Brothers, nor to either of said defendants, nor to said co-partnership; that said garnishee then had and now has in its possession or under its control no real estate and no personal property, effects or credits of any description belonging to said defendants or either of them, or in which they or either of them may have any interest, and is in no manner liable as garnishee in this action.

CYRUS CRANE.

Subscribed and sworn to before me this 25th day of April, 1902.

LESLIE J. LYONS,

[SEAL.]

*Notary Public within and for
Jackson County, Missouri.*

My commission expires May 31st 1905.

Endorsed: 161. C. H. Albers Com. — Pl'ff vs. Forrester Bros. Def't. The Kansas City Southern Ry. Co. Garnishee. Affidavit of Garnishee. Filed April 26th 1902. Frank O'Reilly, clerk Dist. Court. By F. Robinson, Deputy Clerk. Cyrus Crane, W. J. Watson, Att'ys for Garnishee.

16 Thereafter, and upon the 7th day of April, 1902, in accordance with precept for summons in garnishment filed by plaintiff, the summons was issued, which is in words and figures as follows, to-wit:

In the District Court, Sitting at Pittsburg, in and for Crawford County, State of Kansas.

C. H. ALBERS COMMISSION COMPANY (a Corporation), Plaintiff,
vs.

ROBERT L. FORRESTER and JOSEPH M. FORRESTER, Co-partners, Composing the Firm of Forrester Bros., Defendants; The Kansas City Southern Railway Company (a Corporation), Garnishee.

The State of Kansas to said Garnishee:

You are hereby summoned pursuant to the affidavit filed herein, as garnishee of the defendants, Robert L. Forrester and Joseph M.

Forrester, co-partners composing the firm of Forrester Bros., and required within twenty days from service of this summons to answer according to law whether you are indebted to or have in your possession or under your control, any property, real or personal, belonging to such defendants, and file a copy of your answer with the Clerk of this Court; and in case of your failure so to do you will be liable to further proceedings according to law. Of which the said defendants will also take notice.

FRANK O'REILLY,
Clerk of District Court, Crawford County, Kansas,
By FRANK ROBINSON,
Deputy Clerk.

[SEAL.]

Endorsed: No. 161. Summons. C. H. Albers Commission Company, (a corporation), Plaintiff, vs. Robert L. Forrester and Joseph M. Forrester, co-partners, Defendants.

If the Garnishee fail to answer, the plaintiff will take judgment for eleven thousand dollars with interest thereon at the rate of — per cent. per annum, from the — day of — and costs of the proceedings and suit.

FRANK O'REILLY, *Clerk.*

17 Issued April 7th 1902. Returnable April 17th 1902.
Filed April 7th 1902. Frank O'Reilly, Clerk.

Sheriff's Fees.

Serving Summons, first person	\$.50
1 copy of summons25
Milage 26 miles	2.60
Total	<u>\$3.35</u>

M. G. VINCENT, *Sheriff.*

Received this writ, this 7th day of April, 1902, at 9 o'clock A. M. Served the same at 10 o'clock A. M., April 7th, 1902, by delivering a copy thereof, with the endorsement thereon, duly certified, to F. M. King at the office of the within named garnishee, The Kansas City Southern Railway Company, (a corporation) the said F. M. King being the ticket agent for the sale of tickets for the within named garnishee, The Kansas City Southern Railway Company (a corporation), The President, Chairman of the Board of Directors, Trustee or other chief officer of the within named garnishee not being found in Crawford County, Kansas, and the within named garnishee having failed to designate any person in said county upon whom service of summons can be made, as required by law.

M. G. VINCENT,
Sheriff of Crawford County, Kansas.

Thereafter, and upon the 7th day of April, 1902, pursuant to a preceipe for summons filed by plaintiff, the summons was issued, which is in words and figures as follows, to-wit:

18 UNITED STATES OF AMERICA,
Sixth Judicial District:

STATE OF KANSAS,
Crawford County, ss:

The State of Kansas to the Sheriff of Crawford County, Greeting:

You are hereby commanded to notify Robert L. Forrester and Joseph M. Forrester, co-partners composing the firm of Forrester Bros, that they have been sued by C. H. Albers Commission Company, a corporation, in the District Court, sitting at Pittsburg, in and for the said county of Crawford, and that unless they answer by the 7th day of May A. D. 1902 the petition of the said C. H. Albers Commission Company (a corporation) against them filed in the Clerk's office of said court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 17th day of April A. D. 1902.

Witness my hand and the seal of said court affixed at my office in the city of Pittsburg, this the 7th day of April A. D. 1902.

FRANK O'REILLY,

Clerk of the District Court:

[SEAL.]

By FRANK ROBINSON, *Deputy.*

Endorsed: Summons. No. 161 Page 180-a. In the District Court, Crawford County, Kansas. Sitting at Pittsburg. C. H. Albers Commission Co. versus Robert L. Forrester et al. Issued Ap'l 7th 1902. Returnable Ap'l 17th 1902. Answer May 7th 1902. Filed Ap'l 7th 1902. Frank O'Reilly, Clerk of the District Court.

Received this summons this 7th day of April 1902 at 9 o'clock A. M. April 7th, 1902. I cannot find the within-named defendants Robert L. Forrester and Joseph M. Forrester, co-partners composing the firm of Forrester Bros. in Crawford County, Kansas.

M. G. VINCENT,

Sheriff of Crawford County, Kansas.

Sheriff's Fees.

Return of summons, first person	\$.50
Not found two copies of summons10
Milage 26 miles	2.60
Total	<u>\$3.20</u>

M. G. VINCENT, *Sheriff.*

19 Suit brought for recovery of money; amount claimed, \$11,000.00 with interest from the — day of — 190—, at the rate of — per cent. per annum and costs of suit.

PAUL F. COSTE AND
J. M. WAYDE,

Attorneys for Plaintiff.

20 Thereafter, and on the 2nd day of May, 1902, defendants filed their answer herein as follows:

(Omitting Caption.)

Come now said defendants and for their answer to the petition of said plaintiff filed in the above entitled action, *and* allege that they waive the issue and service of summons in the above entitled action, and hereby enter a general appearance in said action, and admit that said plaintiff is a corporation, as alleged in said petition of said plaintiffs and that said defendants are co-partners, doing business under the firm name of Forrester Brothers, and deny each and every other allegation in the petition of said plaintiff contained.

FORRESTER BROS.,
Per R. L. FORRESTER,
Defendants.

Endorsed: #161. Albers Commission Co. vs. Forrester Bros. Answer of defendants. Filed May 2, 1902. Frank O'Reilly, Clerk Dist. Court.

21 Thereafter, and on the 26th day of June, 1902, plaintiff filed journal entry, which is in words and figures as follows:

(Omitting Caption.)

Be it remembered that on this 19th day of June, A. D. 1902, the above entitled action came on for hearing in the above entitled court at the regular call of the trial docket, as to the issue joined between the plaintiff, C. H. Albers Commission Company, a corporation, and the defendants, Robert L. Forrester and Joseph M. Forrester, partners doing business under the style and firm name of Forrester Brothers; and the June term, 1902, of said court being in regular session, and the Honorable W. L. Simons, the Judge of said court, being present, and Frank Robinson, the deputy clerk of said court, being present, and M. G. Vincent, the sheriff of said county, being present, and the said plaintiff appearing by its attorney, J. M. Wayde, and said defendants, Robert L. Forrester and Joseph M. Forrester, appearing by their attorney, J. J. Campbell, by the consent of said plaintiff and said defendants, a jury was waived, and the issues herein submitted to the judge of said court, and after hearing the proofs, and allegations of the parties hereto, and on the evidence submitted, and the statement of counsel, the court does find that said defendants, Robert L. Forrester and Joseph M. Forrester,

are partners, as alleged, and that said plaintiff is a corporation, as alleged in said plaintiff's petition, and that said defendants, Robert L. Forrester and Joseph M. Forrester, are indebted to said plaintiff, as alleged in the petition of said plaintiff, in the sum of Ten Thousand, Three Hundred Thirty-three 72/100 (\$10,333.72) Dollars, and it is, by the court, considered, ordered and adjudged, on the testimony herein submitted, and the statements of counsel, that said plaintiff have and recover of, and from said defendants,

22 Robert L. Forrester and Joseph M. Forrester, the full sum of Ten Thousand Three Hundred Thirty-three 72/100 (\$10,333.72) Dollars, with interest thereon at the rate of six per cent (6%) per annum from the 19th day of June, A. D. 1902, and the costs of this action, taxed at — (\$—) dollars, and that execution be awarded against said defendants, and each of them, and that this action be continued as to the issues between said plaintiff and the garnishee in said action.

J. M. WAYDE,

Attorney for Plaintiff.

J. J. CAMPBELL,

*Attorney for Robert L. Forrester and
Joseph M. Forrester, Partners Doing
Business under the Style and Firm
Name of Forrester Brothers.*

Endorsed: No. —. In the District Court of Crawford County, Kansas, sitting at Pittsburg. C. H. Albers Commission Co., Plaintiff, vs. Forrester Bros., Def't. Journal entry. Filed Jun- 26, 1902. Frank O'Reilly, Clerk District Court. See Journal A, page 204. J. M. Wayde, Att'y for Plaintiff.

23 And thereafter, and on the 31st day of May, 1906, this cause came on for trial on the regular call of the docket upon the issues joined between the plaintiff and the garnishee. The plaintiff appeared by its attorneys, Paul F. Coste, J. M. Wayde and B. S. Gaitskill, and the Garnishee, The Kansas City Southern Railway Company, appeared by its attorneys, Cyrus Crane and W. J. Watson. Both parties announced themselves ready for trial, and thereupon a jury was duly empanelled and sworn, as is more fully shown in the journal entry at page — hereof.

Thereupon plaintiff, by its attorney, Paul F. Coste, made its opening statement herein, as follows, to-wit:

If it please the court, and gentlemen of the jury:

Now that we may understand the evidence better as it is brought gradually before you in this trial, I want to give you practically the substantial history of the transactions that are involved in this case; also the names of the different parties that you will hear in the course of the trial and what they represent and who they are in relation to each other. Now in the first place, I want to say something in regard to the nature of this case; the plaintiff in the case is the C. H. Albers Commission Co., of St. Louis, they are buyers and sellers of grain. Forrester Brothers are defendants in the case;

they are also grain dealers and their offices are in St. Louis. Some time before the instituting of this suit Forrester Bros. failed, leaving considerable indebtedness to pay; some of this indebtedness was to the C. H. Albers Commission Co., and that indebtedness amounted exactly to \$10333.72. Now at the time of this failure of

24 Forrester Bros., Forrester Bros. had been engaged for some time in collecting a claim which they had against the Kansas City Southern Railway Co. That claim was for altogether 345 cars of corn and oats, principally corn and some oats, which were shipped from Omaha and surrounding points down to Texarkana in Texas, and surrounding points. Now the claim which Forrester Bros. had against the Kansas City Southern was for over-charges on this freight. They claim they had a contract with the Kansas City Southern Railway Co. and another railroad running north of Kansas City; their own agents transacted those arrangements by which contract the Kansas City Southern was to get 8 cents a hundred pounds for freight coming through Kansas City and going on south. As a matter of fact, as we will show you, bills were presented by the Kansas City Southern for rates exceeding that 8 cents a hundred rate; they were at one time 10 cents and another 14 cents. This is one of the kind of suits that are frequently brought by creditors where they are trying to reach the funds in the hands of a third person that are coming to the person who owes them. So you see in this case the Albers Commission Co. had this claim for \$10333.72 against Forrester Bros., and when Forrester Bros. failed and had no other valuable property in St. Louis or anywhere else, except this claim against the Kansas City Southern, the Albers Commission Co. brought suit in their place to establish its claim for \$10333.72 against Forrester Bros. and at the same time reach whatever claim for over-charge was owing from the Kansas City Southern Railway Co. to Forrester Bros. And if they succeed in establishing this latter indebtedness then they may apply such part as may be found due and owing from the Kansas City Southern to Forrester Bros. on their claim against Forrester Bros. Now that is the whole situation.

25 This is called a garnishment suit ordinarily among lawyers, and the first part of this garnishment suit has been completed and is not before you. If you gentlemen find that there is anything now due from the Kansas City Southern Railway Co. to Forrester Bros., that amount can be applied to satisfy this judgment of the Albers Commission Co. which we already have on the records of this court against Forrester Bros.

Now as to the history of this transaction. Forrester Bros. in the year 1901 were engaged in buying and selling grain out west here, that is, in Iowa, Nebraska and that neighborhood, and buying it up there and then making sales of it down in Texarkana. As it happens that year there was a drought in the neighborhood of Texarkana and there was a good market. Forrester Bros. was nearly ready to do business by buying whatever they could and transporting it down to the Texas market; for that purpose they had two agents employed in the western part of the country, one of them

was C. V. Fisher, that gentleman back of Mr. Wayde, the other was E. F. Catlin. Mr. Fisher's business was to buy the grain up in that Omaha neighborhood; Mr. Catlin's business was to make the sales of the grain down south. Now there is a third agent that you will hear of in the course of the trial, and that is the Kaw Grain & Elevator Co., of Kansas City; they were then the financial agents of Forrester Bros., and settled for the purchases of this grain, and also the transportation costs. Now at the time Fisher, for Forrester Bros., was ready to make the purchase of grain for this purpose, he wanted, of course, to know, for the purpose of ascertaining what price he could afford to pay the farmers, the producers of the grain, and also what price they could afford to make to the purchasers of the grain around Texarkana, what the cost would be for transporting this grain all the way from Omaha and Council Bluffs neighborhood, where it was bought down to Texarkana. That, you can see, was the basis of this whole transaction of purchase and sales. Then Mr. Fisher went to the railroad to see what could be done in this matter. In doing so he approached a Mr. Schaufler, the general freight agent of what was known as the Northern Connecting Lines; this is a road running into Kansas City from this Omaha neighborhood. Mr. Schaufler was the man to make the rate for this road, and of course that would cover the portion from Omaha into Kansas City. Mr. Fisher said he had a large amount of grain that he could and would ship if he got proper freight rates over that road, and also over another road going south; that road was to be the Kansas City Southern. Mr. Fisher asked Mr. Schaufler, after ascertaining that Mr. Schaufler's road was willing to go into a through rate on this grain, to see the officers of the Kansas City Southern road and see what the price or rate was for which they would agree to carry the grain over that part of the entire haul. Of course the grain was to be hauled from Omaha and Council Bluffs through Kansas City on South. The connecting lines they get together and agree upon a through rate, and that through rate for a long distance is usually put to the minimum, giving the purchaser the benefit of the very lowest possible rate for a long distance. The evidence will show that Mr. Schaufler, being so requested, went to see the officers of the Kansas City Southern; those officers were Mr. Hanley, who was the general traffic manager of the road at that time, and a Mr. Smythe, the general freight agent. Mr. Schaufler explained what the transaction was to be, that it was to be a considerable or large amount of grain, or words of that sort, and wanted to know what they could do for their part of the haul; and intimated if they would agree upon 8 cents as their division of the rate for the Kansas City Southern, he could make a satisfactory rate for his road, which put together would make a through rate which would enable the shippers to conduct a profitable business in shipping this grain. That 8 cent rate of the Kansas City Southern was agreed upon. And after it was agreed upon, about 10 days or so later, Mr. Schaufler then heard from Mr. Fisher and he said "go down and tell the Kansas City Southern I will need

in the neighborhood of 500 cars at once," and that seemed to stagger them, as there was quite a blockade, there was a scarcity of cars at that time and he says "we cannot promise to furnish you them at once but will furnish them as soon as possible." This was in the month of October the grain began to come down, and you will see from the evidence the matter of furnishing cars was more or less slow, very slow, in fact, some little of it was moved in October and the bulk of it came along in November, December and January; December and January being the heavy months, and some in February and March. During this period right after October the Kansas City Southern began to put in bills for their share of this business at 10 cents a hundred pounds instead of 8 cents, which we will show it had contracted for, making an excess of two cents; later on it put in its bills for 14 cents for their part, an excess of 6 cents; and later on an excess of $6\frac{1}{2}$ cents. The shippers at that time had made their contracts, they were bound to carry their grain down in Texas and deliver it or be in default. Mr. Fisher and some few other gentlemen representing Forrester Bros. went to the chief officers of the Kansas City Southern and protested and insisted that no more be charged than the contract rate of 8 cents.

28 There is another thing in this case that the evidence will develop; it seems that the intention of the railway and shippers was that this grain should go right through from its origin to Texarkana, and it was started out that way. Now the railroad, for some reason that is not yet explained, say that for their convenience in handling this freight, the billing, the *weigh* bill, originally issued as through bills, were not allowed to go through, but they broke in two the haul at Kansas City so far as the billing was concerned. And in this way the Kansas City Southern came to issue new bills as though the shipment originated at Kansas City and went down to Texarkana, but you will notice that that was merely a matter of form; it was the same grain that was contracted for at the through rate, and the same grain that was to go down. These expense bills involve, as we claim, the excess charges, and they will be shown you and you can examine them. They will show that the excess amounts to \$10,333.72. Now that is about all that is to be said about the character of this transportation, how this claim originated.

The counsel of the defendant company, or garnishee, as the railroad company is called, will have perhaps a good deal to say to you before this case is over about what is known as the Interstate Commerce Act. It was an act of Congress, and the object of the act was to prevent railroads from granting low rates to some shippers and high rates to other shippers. The Kansas City Southern Railway Co. for some reason of its own insisted on getting more than its contract rate, and we are trying to get back money which they ought never to have collected from us. They will tell you something about rebates; rebates are things that this Interstate Commerce act prohibits; not because they are money wrongfully taken from the shipper, but money wrongfully returned to the shipper. The shipper is given the rate that everybody must

pay, and there is a secret rate made between the shipper and the railroad company that after the shipper has pretended to pay this usual rate that everybody pays, that they will give him back some of that; in that way giving him a lower rate. Now I will say before you have heard any of the evidence that there is nothing, absolutely nothing of that sort of the case.

30 *Statement of Garnishee by Cyrus Crane, Esq.*

May it please the court, and Gentlemen of the jury:

In the last part of Mr. Coste's opening statement he got down pretty close to the merits of the proposition, and I want to state this also to you so you will understand it exactly. In order to do that it is necessary for me to ask you to follow as carefully as you can what I am about to say to you in regard to the merits of the case, because a good deal of this testimony will appear in depositions. I am sorry that all of the witnesses can not be here so they could be submitted to an examination before you, because I know if you can get the facts fairly before you, although it may be done, you will find that there is much in the case that will be of great interest to you all. Now then this, as the other side says, is a suit to recover over-charges; and down in the last end of the statement, knowing that I would state what it is, that it is a suit to recover rebates, or ask the company to pay rebates, he starts to pave the way for that statement; but gentlemen, the facts in the case are about this: this company, Forrester Bros., were in the grain business; they had two representatives, Fisher and Catlin; Fisher up at Omaha, and Catlin at St. Louis. And they conceived the idea of selling a large quantity of grain, and that if they could get a cut rate on their shipments they could make a very handsome profit. So they go to Mr. Schaufler of the Northern Connecting Lines, as they are called; those are the lines between Omaha and Kansas City, you need not bother with the names further than to recall them as the Northern Connecting Lines, for that is the way they are spoken of in the testimony. That line is a line wholly distinct and separate from the Kansas City

31 Southern, as distinct as the Missouri Pacific or Frisco. These gentlemen go to Mr. Schaufler, the traffic agent for that road, and they arrange for a rate from Omaha down to Kansas City. That rate was what we call a cut rate, that is, it is a rate less than was given to other shippers desiring to make shipments. Now, gentlemen, there would be nothing wrong or improper about that if it were not for the fact that it is absolutely against the law. And that in this way. The Congress of the United States has passed a law which provides that on interstate shipments made from one state to another, Congress has control of that kind of business, that the railroad companies must give the same rate to all people on the same kind of business. The simple purpose of that, gentlemen, is to prevent one man being able to ruin his competitor by having an advantage in freight rates, or one farmer, for that matter, being able to compete in an unfair way against his neighbor by being able to deliver his goods on the market cheaper than the other man. So they passed this law,

that all rates must be uniform between given points on the same kind of commodities. But these people got, as I say, the cut rate from Omaha to Kansas City, and they have the opinion that they want still further concessions, so they ask this man Schaufler to go and see the Kansas City Southern people at Kansas City and see if he could not get a cut rate from Kansas City to the Southern points they speak of, Texarkana and Shreveport, on the Southern, so they would make a pretty good profit. Now you will find that they might be kind o' sugared up and coated under the name of a proportion of the joint through rates; but the evidence will show that no matter what name you call it by, when you get right down to the merits of it it was nothing but an attempt to get a cut rate less than

32 the general public were charged for that same service by the Kansas City Southern. And the traffic manager of the Southern talked this matter over with Mr. Schaufler; he told them he was anxious to get business for his road and says "I want you to help me out"; put it on a personal ground. And the Kansas City Southern,—their man did a thing that was not right at that point, they agreed that for a short time they would take 8 cents, although their legal lawful rate at that time was 10 cents. That was the rate that every other shipper had to pay on that kind of commodity, and it was the only rate they had a legal right to charge. But they did wrong, and they told Schaufler for a short time they would help him out and make an 8 cent rate down to the south. Now gentlemen, just a word how these rates are put into effect. They must make up their rate, say what it is, and send it to Washington and file it there with the Interstate Commerce Commission; when they have done that it becomes a legal rate; it is open to every body, and anybody can find out what it is. If they want to increase it they must send word to the Commission that on a certain date we will put a new rate on. They having given the proper notice, this increased rate applies; also if they want to decrease the rate they have got to give the Commission the same notice; the purpose being so that every body can get these rates, and every body know what the lawful rate is, and no body get a rate better than the rate given their competitors in any line of business.

There is one more thing that should be explained to you, for that is the theory under which this plaintiff is to claim that their arrangement was lawful; that is this, here is two lines, one the Northern Lines from Omaha down to Kansas City, and the Kansas City Southern down to Texarkana and Shreveport. Now those two roads they
 33 get together and make a rate clear from Omaha to Texarkana; that is a joint rate. If they do that it is the duty of the road getting up the joint rate to publish the joint rate at Washington with this Commission, and then it is open to the world; and that is the rate that must then apply to that class of business. In this case you will find that no such rate was ever published, as this Northern Connecting Lines should have done if they wanted to make a straight legal transaction. That was the way for them to do it. If they wanted to get the Kansas City Southern to join in a joint rate, and did get them, then if they filed it in Washington it would be a

legal rate and every body could have got it, and they could have made it what they pleased, so long as it was not unfair, but they never did that. They did get, as I stated, the Southern to agree to this request and cut the rate from Kansas City to Texarkana and Shreveport. Now the testimony will show that although that was wrong and unlawful, yet the Southern abided by it and lived up to it for as long a time as these Northern Connecting Lines people said that that rate would be in effect. After they had got this concession this agent of the Northern Connecting Lines went back to his office and they got out a little paper called a memorandum tariff, sent it down to the Kansas City Southern and stating that this rate would expire on the 31st of October 1901. *On the 31st of October 1901.* And from the time that the Southern made this cut rate until October 31st 1901, they did live up to it and did pay back to these people the difference between that cut rate and the lawful rate then in force. And those were rebates. That is what a rebate is; it is paying back to the shipper secretly, and under contract, the difference between the law-

ful rate in force and any side agreement that the company
34 may make with him in order to get his business; just give the money back to him; of course he pays the legal rate and then they go to work and give it back to him in the way of rebates, the difference. Now after these Northern Connecting Lines had said this rate would expire, then these shipments kept coming on down from the Northern, and there was applied to them the legal rate from Kansas City to the south; the same rate that every body had to pay. From that time on until their shipments were through there was no more of the rebate business. They kept trying to get it, making various efforts to get it, and while they were making these efforts Forrester Bros. failed, went into bankruptcy, or something, any way they failed, and their creditors began to stir around to see what they could get out of their assets as payment on part of their debts; and this Albers Commission Co., of St. Louis, and some of the other creditors that had got track of this claim they said they had,—that Forrester Bros. said they had against the Kansas City Southern, this sum of \$10000 or \$12000 in rebates, and they thought they would try to force that claim against the railroad company, and that, gentlemen, is the purpose and object of this suit. We expect to demonstrate to you that that is the facts, and we expect the court to tell you that any contract or arrangement by which a shipper gets a lower rate than the published tariff rates, which I have described to you, is wholly illegal and void and can not be enforced, and is so tainted with illegality that it has no standing in any court. And in addition to that I ask you to bear in mind that these Northern Connecting Lines, as the testimony will show you, after getting this cut rate from the Kan-

35 sas City Southern, sent to them a statement showing that that rate would expire on the 31st of October 1901. And we say that during that time until the expiration fixed by him in his own circular, which they sent us, our people did give the cut rate, though they had no business to do it and it was unlawful to do it. If you find the facts as I have stated them, and we think you will, we expect you to return a verdict for the defendant party, of the garnish-

ment. We have the deposition of this Mr. Schaufler, agent for the Northern Connecting Lines, and will read it to you. He appeared at the taking of that deposition, as it shows, with his own lawyer sitting there beside of him, and when these attorneys who questioned him began to get in close to this arrangement, the facts of it, his lawyer promptly objected and headed off the answer. And a good deal of his testimony is not true at all; so bear in mind that fact when you hear it, that he is the man that made the arrangement with the Kansas City Southern in the first instance. Now Mr. Fisher, one of the gentlemen interested with Forrester Bros., is here. He had nothing to do personally with making or obtaining this cut rate that I told you about from the Kansas City Southern. He has Schaufler to go down and get that, so he knows nothing about what occurred there. There was no other representative of Forrester Bros. present; Mr. Catlin, the other man at St. Louis, is here also by deposition and not in person. I say that to you about Schaufler's testimony because he is the man that went and got the cut rate. And gentlemen, when you bear in mind these facts as I have tried to relate them to you, you will find there is a great and important point involves here. We say that to give a judgment to this plaintiff would be simply a travesty upon a law which has been found to be wise in order to prevent unfair dealings between railroads and shippers along their line; against the provisions which *is* intended to give every shipper a fair square deal, and a fair opportunity with his neighbor.

36 Cyrus Crane, Esq.:

I desire to move to dismiss the garnishment proceedings in this case for the reason it appears from the opening statement of the plaintiff's counsel that this is an action in which the validity of several provisions of the interstate act of Congress to regulate commerce is involved, and that Congress having passed an act for the regulating of interstate commerce and provided therein the tribunals before which such questions shall be settled, and that being the Federal Court or Interstate Commerce Commission, this court is without jurisdiction over the subject matter in the action.

Motion overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

37 Plaintiff now read in evidence the deposition of E. H. Schaufler, of which the following is a copy:

In the District Court of Crawford County, Kansas, Sitting at Pittsburg.

C. H. ALBERS COMMISSION COMPANY (a Corporation), Plaintiff,
vs.

ROBERT L. FORRESTER and JOSEPH M. FORRESTER, Partners, Doing Business under the Style and Firm Name of Forrester Brothers, Defendants; The Kansas City Southern Railway Company (a Corporation), Garnishee.

Depositions of witnesses taken before me, James G. Smith, a Notary Public within and for the County of Jackson, in the State of Missouri, on the 10th day of November, A. D. 1902, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, at the office of Gooding & Murray, law stenographers and notaries, rooms 921 & 922, New York Life Building, Kansas City, in said county, pursuant to annexed notice, in an action pending in the District Court of Crawford County, Kansas, wherein C. H. Albers Commission Company (a corporation) is plaintiff and Robert L. Forrester and Joseph M. Forrester, partners doing business under the style and firm name of Forrester Brothers, are defendants and the Kansas City Southern Railway Company (a corporation) is garnishee.

The said plaintiff appeared by its attorney Paul F. Coste, and the Garnishee appeared by its attorney, O. W. Pratt. Thereupon the said plaintiff produced the following witnesses in the following order:

The taking of the depositions was by agreement adjourned until Tuesday at 10 o'clock, then to be taken at the place specified in the notice.

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TUESDAY, Nov. 11, 1902.

The taking of the depositions was by agreement adjourned until Wednesday at 2 o'clock P. M., then to be taken at the place specified in the notice.

WEDNESDAY, Nov. 12, 1902.

Pursuant to adjournment as above, the depositions were taken at the place and between the hours named in the notice.

(Read by Mr. B. S. Gaitskill.)

E. H. SCHAUFLE, of lawful age, being produced, sworn and examined on behalf of plaintiff, deposeth and saith:

Direct examination by Mr. COSTE:

Q. Please state your full name?

A. Edwin Henry Schaufler.

Q. Where do you reside?

A. My address is 1224 East 8th street.

Q. Here is town, Kansas City?

A. Yes sir.

Q. Mr. Schaufler what is your present business?

A. Vice-President and General Manager of the Mexico & Orient Steamship Co.

Q. What was your business last year between, say, July and the first of the present year?

A. I was mixed up with a lot of different businesses.

Q. State your business?

A. I was interested in the Mexico & Orient Steamship Co. The Kansas City, Mexico & Orient Railroad Company. In July?

Q. From July until the first of the year.

A. And with the Kansas City Northern Connection Railroad Company and the Omaha and St. Louis.

Q. What was your position with reference to the Kansas City Northern Railroad Company, as you call it?

A. Freight traffic manager.

Q. What road does that company operate?

A. They operated the Omaha & St. Louis; the Kansas City Northern Connecting, and the Omaha, Kansas City & Eastern.

Q. Do you know Mr. C. V. Fisher, the gentleman who is here present at these depositions?

A. Yes sir.

Q. I will ask you Mr. Schaufler whether about July, August or September last you had, as traffic manager of these Northern Connecting Lines that you have mentioned, any business with Mr. Fisher with reference to the movement of grain from Omaha or Council Bluffs south to Kansas City and south of there?

A. Yes, there was some grain handled from Omaha to Kansas City, in which Mr. Fisher was manager of the Company—Forrester Bros. of St. Louis. What year was that? What year did you refer to?

Q. I will ask you?

A. You said in July, did you not?

Q. Of last year, 1901. What agreements, if any, did you make with Mr. Fisher as representing Forrester Bros. of St. Louis, who, as you stated represented Forrester Bros. in this transaction?

A. I arranged with Mr. Fisher to handle some grain, as representative of the Northern lines, from Omaha to Kansas City.

Q. Please state when Mr. Fisher saw you in regard to the movement of this grain and what he said?

A. I can't remember that. I saw him quite often and we had lots of conversations.

Q. What did he want your road to do for him?

A. Carry his grain from Omaha to Kansas City.

Q. State what he requested you to do at that time with reference to giving him any rates at which this grain could be shipped from the places where it was to be shipped from?

A. I don't remember the conversation. We had so many, I don't remember everything.

Q. Did you give him a rate Mr. Schaufler?

A. From where?

A. From Omaha or points up there on the Northern Connecting lines to Kansas City, and from Kansas City southward?

A. Yes, we arranged to handle the business from Omaha to Kansas City.

Q. What did you tell him you would do?

A. Well, I don't remember now just what arrangements we had at different times.

Mr. EATON: I appear here for Mr. Schaufler, and so far as any inquiry in regard to the rate from Omaha to Kansas City, or from any other point on the Northern lines to Kansas City, appears upon this issue to be wholly immaterial to this controversy which concerns the rate from Kansas City south, and any inquiries in regard to that rate on the Northern lines or what rate he may have made and quoted, I will direct him not to answer.

Q. I will ask you Mr. Schaufler what Mr. Fisher said to you with reference to the movement of a certain lot of grain from Omaha and similar points through Kansas City and south to Texarkana, or Texas points?

A. He said he could—he thought he could ship some grain to Texarkana if proper arrangements could be made.

Q. Did he ask you for a rate on these shipments from where they were to begin down to Texarkana? In other words, on your road, one of the Northern Connecting lines and the Kansas City
41 Southern to the place of destination?

A. Yes.

Q. What rate did you give him?

A. I think it was 16½ cents to Texarkana from Omaha.

Q. In order to quote Mr. Fisher that rate did you have to see the Kansas City Southern Railway Company or its officers in order to establish a rate with them for carrying the grain from Kansas City south to the place of destination?

A. That rate was in effect at that time. It is the sum of the two locals.

Q. I will ask you Mr. Schaufler to state exactly what you did when you received the request of Mr. Fisher for a rate from Omaha and other places in that neighborhood down through Kansas City to Texarkana and similar points with reference to consulting the Kansas City Southern Railway Company and seeing for what they would carry the grain from Kansas City south?

A. It was not necessary to see the Kansas City Southern to make that rate. Not to make a through rate.

Q. Then explain, if you please, how they got that through rate?

A. You mean the division of the through rate?

Q. My question is plain.

A. I think the rate was divided 8 cents to the Kansas City Southern and the balance to the Northern lines.

Q. Did you determine that yourself?

A. That was an agreement. That was the division agreed upon between the Kansas City Southern and myself.

Q. If there was a division agreed upon between yourself and

the Kansas City Southern, you did see the Kansas City Southern people did you not?

A. For that division, yes sir.

Q. Did you see them?

A. Yes sir.

42 Q. What did you say to them with reference to these shipments?

A. There were a great many things said in order for them to agree on this division. I don't remember the conversation exactly.

Q. Mr. Schaufler, as this is a railroad company which does business through its agents, I wish you would state just what agents of the railroad company you saw, naming the officers with whom you had the conversation in this regard?

A. Mr. Hanley, Freight Traffic Manager of the Kansas City Southern, Mr. Smythe, General Freight Agent, same line, and Mr. Dennis, Assistant General Freight Agent, same line.

Q. What did Mr. Fisher say to you in regard to the amount of shipments that were to be made from Omaha and similar points down through Kansas City south on which you inquired for him what rates could be obtained?

A. You mean the business for Texarkana or Kansas City?

Q. Both.

A. He said there would be quite a lot of business to move to Kansas City and Texarkana.

Q. Did he describe to you, Mr. Schaufler, about how many cars, or what quantity of grain these shipments would include?

A. Different times he ordered cars amounting to possibly, 400 cars. That is, to be distributed between here and Texarkana.

Q. About when was this conversation about moving this stuff down, as near as you can remember?

A. I don't remember the dates exactly, it was at the time grain was moving.

Q. State about the month and day as near as you can? When it first started to move.

A. The books will show that, I don't know. I can't remember the month exactly.

Q. From your recollection what would say? It was
43 last year, and was it——

A. Possibly September.

Q. August or September, about that time?

A. Around in that vicinity.

Q. Now you say you saw Mr. Hanley and Mr. Smythe of the Kansas City Southern Railway Company and asked them as to their rate for shipping this same lot of grain down from Kansas City to Texarkana and Shreveport. What did you say to them as to the amount of these shipments of the number of cars that would be required?

A. The time I made arrangements I said there would be quite a lot of business.

Q. Were you very particular in naming the number of cars?

A. Not at that time, not when the arrangements for the rate was made.

Q. Please state as nearly as you can recollect the conversation in full that occurred between you and Mr. Hanley or Mr. Smythe about this matter, at that time?

Mr. PRATT: State the substance of it you mean?

Mr. CO-TE: Yes.

Garnishee objects: where a claim is made for an over-charge, as in this case, the only — that cash claim can be established in interstate business, as this is shown to be, is by showing that the carrier charged and received a greater rate than its published tariffs allow it to receive and charge; and that any mere verbal agreement for a certain rate which varies from the tariff can not be the basis for any right to recover.

Objection overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

A. I called at Mr. Hanley's office and explained to him that Forrester Bros. of St. Louis could ship some grain from Kansas City to Texarkana if they could make a division of 8 cent rate, or an 8 cent rate from Kansas City to Texarkana. Mr. Smythe came in the office shortly after I arrived there, and after discussion of the question, Mr. Smythe agreed to make the 8 cent rate, which was about all that was done on the day that arrangement was made.

Q. Was Mr. Hanley present at that conversation?

44 A. I am not sure, but he knew of the rate after it was made. I don't remember whether he was present when Mr. Smythe named the rate, but he was told about it afterwards at the same conference.

Q. Did you, from what occurred between you and Mr. Hanley, know that Mr. Hanley had approved of this arrangement?

Mr. PRATT: Ask what occurred.

Q. How do you know, Mr. Schaufler, that this arrangement which you made with Mr. Smythe was satisfactory to, or approved by Mr. Hanley?

A. After the rate was named, we talked it over in Mr. Smythe's office or Mr. Hanley's office, I don't remember which.

Q. That is to say between yourself and Mr. Hanley?

A. Yes.

Q. Whether Mr. Smythe was present or not at that time?

A. After the rate was named it was talked over by the three of us and in that way it was made known to Mr. Hanley.

Q. Was that in effect that the Kansas City Southern would carry this stuff down from Kansas City to either Texarkana or Shreveport at 8 cents per hundred pounds?

A. Yes sir.

Q. What did Mr. Hanley and Mr. Smythe say as to what rate they would carry this stuff down from Kansas City to Texarkana or Shreveport for?

A. When the rate was first agreed upon it was a division of a through rate that was accepted, which was 8 cents.

Q. What was agreed between you and the Kansas City Southern Railroad Company, through these men at the time you say it was first agreed upon?

A. I don't clearly understand.

Q. (Question read.)

45 A. The arrangement was to carry grain from Kansas City south at a division of 8 cents. That was the original arrangement made with the Kansas City Southern people.

Q. That is to say the Kansas City Southern Railroad Company was to get 8 cents per hundred pounds for carrying this lot of grain for which you had contracted, or were contracting, from Kansas City south to Texarkana or Shreveport for 8 cents?

A. That was the division of the rate that they agreed to accept, 8 cents.

Q. Mr. Schaufler, who were Mr. Hanley and Mr. Smythe in their relations to the Kansas City Southern Railroad Company?

A. Hanley was Freight Traffic Manager for the company, and Mr. Smythe was General Freight agent with the same company at that time.

Q. Were they the proper and usual representatives of the Kansas City Southern Railroad Company for making contracts of that kind?

A. Yes sir.

Q. You had dealt with them, had you not, as representatives of the Kansas City Southern Railroad in similar transactions with reference to rates?

A. Yes sir.

Q. And the agreements that you had made with them, they acting on behalf of the Kansas City Southern Railroad Company, had been approved and upheld by that Company, had it not?

A. Do you mean on shipments of this kind?

Q. On any transactions you had with them?

A. Yes sir.

Q. I will ask you what shipments were made pursuant to this rate which you quoted to Mr. Fisher in a general way?

A. Do you mean the number of cars that were shipped under this agreement?

46 Q. Well, as near as you can state, although I am not particular about the number of cars, just state how long the shipments continued and about what amount was shipped.

Mr. PRATT: When did your connection with the concern cease?

Mr. COSTE: Let us get to that in another question.

Mr. PRATT: I would like that for my own information.

Mr. COSTE: If you can get it into the answer I have no objections.

A. I can not remember the number of cars shipped from Kansas City to Texarkana. My services with the O. & St. L. Railroad ended when the Wabash road—when the road was turned over to the Wabash.

Q. What do you mean by the road being turned over to the Wabash?

A. The Wabash Railroad Company purchased the Omaha & St. Louis and they took charge of that line. I forget just what date.

Mr. PRATT: November 3rd.

A. (Cont.) Some time in November.

Q. Can you locate that more definitely as to what time in November?

A. No, I can't, not unless I look up some records.

Q. Do you mean the Wabash Railroad Company purchased the Omaha & St. Louis road?

A. Yes sir.

Q. And they took charge and control of it about that time?

A. Yes.

Q. In doing so, that is to say in taking charge and control of the road as purchaser, they took the road, did they not, with such contracts as the road then had made, that is the old Omaha & St. Louis?

A. I don't know what arrangements were made when the road was taken by the Wabash Railroad Company.

Q. Had these shipments for which Mr. Fisher was contracting with you, been completed at that time, Mr. Schaufler? I will add that I refer to the time when the Wabash Road purchased the Omaha & St. Louis, as you have testified, in order to make the question more definite and specific.

47 A. What shipments do you refer to?

Q. The shipments——

A. For Texarkana and Shreveport?

Q. Yes, all of the grain Mr. Fisher was asking you about, that he was going to move, there is nothing mysterious about the thing at all, that is what I mean, had they been completed, or was it still going on?

A. There was some grain that I know of in transit between Omaha and Kansas City that was diverted by the Wabash via Brunswick instead via the Northern Connecting, which were part of the shipments that were arranged for by Mr. Fisher and our company.

Q. Up to the time Mr. Schaufler, that the Wabash took care of that road of yours, how was this freight paid to your road?

A. In different ways. The detail of the work was handled by Mr. Moore.

Q. Give his full name please?

A. L. F. Moore, Assistant General Freight Agent of the Kansas City Northern Connecting Railroad Company, the Omaha & St. Louis Railroad Company and the Omaha, Kansas City and Eastern.

Q. That gentleman is here now isn't he?

A. Yes sir.

Q. Do you know how settlements were made with the Kansas City Southern road in regard to such shipments of this lot of grain as went south of Kansas City?

A. I didn't attend to the detail end of the transaction.

Q. In other words that was the concern of the other road about which you knew nothing of your own personal knowledge, is that it?

A. I only knew about it in a general way.

Q. What did you know?

A. I knew that the settlements are made in different ways. On this particular business I am not familiar how it was arranged or how it was handled.

48 Q. I will ask you now whether you knew anything about the claim that has been made by these shippers Forrester Bros. represented by Mr. Fisher as you stated against the Kansas City Southern Railway Co. for overcharges on freight paid the Kansas City Southern on these shipments? That is to say in excess of the 8 cent rate which you have mentioned?

A. Mr. PRATT: I don't know whether he knows about it or not.

Q. Give us the benefit of your knowledge any way.

A. Mr. Fisher sent several claims to me for overcharges on grain from Kansas City to Texarkana, which I in turn handed to Mr. Smythe of the Kansas City Southern Railroad Company. What was done with them I don't know.

Q. What were they for, Mr. Schaufler?

Garnishee objects for the reason that these claims were in writing, any claim made by Mr. Fisher as agent of the plaintiff would be simply self-serving declarations.

Objection sustained by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. Was that for the difference between the 8 cent rate and some larger sum or a rate that they had prepaid on these shipments?

Garnishee objects: the papers themselves are the best evidence.

Objection overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

A. The claim, as I remember, was based on an overcharge on grain. I don't exactly remember the figures or the amount.

Q. Well it was over 8 cents, wasn't it?

Garnishee objects: the papers are the best evidence, and calling for the contents of written papers.

Objection overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

A. I think it was, although Mr. Fisher will know more about that than I do. I didn't examine the papers closely. I saw the claim was against the Kansas City Southern, therefore I did not
49 examine them very closely.

Q. But you do remember, Mr. Schaufler, do you not, that it was for all over 8 cents a hundred that these shippers had paid the Kansas City Southern?

Garnishee objects: the papers themselves are the best evidence, and calling for the contents of written papers.

Objection overruled by the court. To which ruling of the court Garnishee at the time duly excepted and excepts.

A. I think Mr. Fisher has a copy of the claim and that would show plainly.

Q. Independent of the copy of that claim haven't you got a sufficient recollection yourself to answer this question?

A. I didn't examine them closely enough to say positively what it was.

Q. You saw these papers, didn't you?

A. I opened them and sent them to Mr. Smythe.

Q. You have stated that the Kansas City Southern agreed with you on this 8 cent rate from Kansas City south on these shipments?

A. The division of 8 cents south of Kansas City.

Q. Now with what you have stated and the fact that you saw these papers, are not you able now to state of your own recollection that this claim which was made against the Kansas City Southern Railroad Company by these shippers was for the excess over 8 cents which they had prepaid on these shipments, for freight?

Garnishee objects for the reason it is calling for a conclusion of the witness, and argumentive, and also calling for the contents of the papers.

Objection sustained by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. Please state your recollection about this transaction, Mr. Schaufler, independent of these papers?

A. What transaction? that claim?

Q. Yes.

50 A. I have already stated what I know about it.

Q. Do you mean to say you have no recollection now independent of these papers as to that claim and what it was for?

A. It was for overcharge of shipments of grain from Kansas City to Texarkana. I didn't examine it, of course, closely to know whether it was a claim for overcharge over 8 cents or not. I was not interested in the claim at all, therefore did not examine the papers closely.

Q. You say it was an overcharge, won't you tell us what was the legitimate charge and what was the excess or over? The question is what is the charge and what is the over.

A. The detail of the rates and divisions was handled by Mr. Moore. I can't say any more than I have in my statement made above. I can't clearly remember. I haven't examined the papers closely enough to know exactly what the figures were.

Q. Then you land this matter with Mr. Moore?

A. Mr. Moore looked after the most of the detail work. I advised him of the divisions and from that on he looked after the detail of the collection of the rates, &c.

Q. Did you do anything further, Mr. Schaufler, with reference to this claim for overcharges against the Kansas City Southern Railway Company to assist these shippers who were making a claim for those overcharges?

A. There was some trouble about the arrangement of the division, and on several occasions I went with Mr. Fisher and Mr. Catlin to see Mr. Hanley and Mr. Smythe of the Kansas City Southern.

Q. What occurred on those occasions with reference to this matter? Please state in full, as near as you can recollect.

51 A. We were there several times and I don't remember the entire conversation that took place. I wasn't present all the time.

Q. Do you remember the first time, Mr. Schaufler, that this matter was taken up with the agents of the Kansas City Southern and who was present?

Mr. PRATT: What do you mean by "this matter"?

Mr. COSTE: Overcharges; this matter of overcharges.

A. Mr. Fisher and Mr. Catlin and myself called on Mr. Smythe and I think Mr. Hanley was in part of the conferences.

Q. Tell us what occurred at that conference please?

A. It was shortly before or after the Wabash Railroad took charge of the O. & St. L. and we talked about the rate south of Kansas City. We were there so often that I can not exactly remember the conversation or what was agreed upon.

Q. You mean you were there so often about this matter of overcharges?

A. No, on different business transactions. I think I was there three or four times with Mr. Fisher.

Q. And each time that you were there with Mr. Fisher, it was about these same shipments, wasn't it, and these same overcharges?

A. About grain shipments, yes.

Q. Wasn't it this same lot that you had contracted for?

A. Yes.

Q. Well, now what occurred, if you can't separate what happened at one time from what happened at another time, tell us the substance of what was said by these agents of the Kansas City Southern Railway Co. on that subject?

A. I was not officially interested at some of the interviews we had with the Kansas City Southern people.

Q. If you were not, why did you go there?

52 A. Merely as a friend of Mr. Fisher to assist him in making arrangements for handling grain south of Kansas City.

Q. Well at that time wasn't the question a question of recovering an overcharge which had been paid to the Kansas City Southern Railroad Company over and above the 8 cent rate?

A. Yes sir.

Q. That was the question that was under discussion then, wasn't it?

A. Yes, at some of the meetings we had with them it was discussed about the overcharge of rate south of Kansas City on this grain.

Q. On the shipments that had already been made and paid for, isn't that a fact?

A. I don't know whether they were paid for, but it was on shipments that had been shipped up to that time.

Q. Over the Kansas City Southern road?

A. Yes sir.

Q. What occurred at these interviews? Tell us all about what was said.

A. There seemed to be an overcharge,—there was an overcharge

on the grain that had been shipped and Mr. Fisher and Mr. Catlin wanted, or tried to arrange for the adjustment of the overcharge, and I think Mr. Smythe agreed to adjust the claims on business that had been shipped or that was in transit at that date.

Mr. CRANE: That part of the answer where the witness states that there seemed to be an overcharge, or was an overcharge on the grain, we desire to strike out for the reason that it is invading the province of the jury, and detailing a mere conclusion of the witness and not a statement of facts.

Motion sustained by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. That is on these same shipments which Mr. Fisher represented for Forrester Bros.?

A. Yes sir.

Q. Well, now, what did he agree about that grain that was then on the track anywhere in progress of shipment?

53 A. He agreed to adjust the claim on shipments that had been shipped and were in transit to that date.

Q. On the basis of an 8 cent rate from Kansas City south, isn't that so?

A. Whatever the arrangement was.

Q. You said that was the arrangement didn't you?

A. That was the arrangement with—that was the division they agreed to accept.

Q. Was this whole business of adjusting, as you say, these overcharges, was it on grain that had been shipped by Mr. Fisher for his people? In other words Forrester Bros., and that was then in transit from above Kansas City down to the south, and to be shipped over the Kansas City Southern Railroad, isn't that so?

A. Yes.

Q. Do you know what prepayments of freight Mr. Fisher or the agents for Forrester Bros. made here to the Kansas City Southern?

A. I do not. Mr. Moore attended to that.

Q. Do you mean to say that Mr. Moore made these payments?

A. Mr. Moore attended to the settlement of—or to the arrangement of the grain that was being shipped at that time.

Q. As a matter of fact, Mr. Schaufler, while you say this arrangement was made between your road and the Kansas City Southern, I will ask you if it was not understood that this grain was to come down over your road and you were to be paid your share of this freight rate and that it was to be re-shipped from here over the Kansas City Southern?

A. The original arrangement was to bill the grain through from Omaha to Texarkana. Afterwards there was some difficulty about that and the detail of the work was looked after by Mr. Moore.

54 Q. How did your road collect its share of these freights, Mr. Schaufler?

A. The collection of freights is looked after by the auditors and agents.

Q. Do you yourself know anything about how this was to be done in this case?

A. Not in this particular case. Mr. Moore looked after the detail of the work.

Q. Is there anything owing to your road on these shipments?

A. Not that I know of.

Q. What did your road get out of this per hundred, Mr. Schaufler?

(Question withdrawn by counsel.)

Q. Now Mr. Schaufler, in regard to this adjustment, that is, of the claims of these shippers on the basis of an 8 cent rate by the Kansas City Southern, what further conferences, if any, were had at which you were present and what occurred at these?

A. I have already stated what has taken place at the interviews, Mr. Catlin, Fisher and myself had with the Traffic Manager and General Freight Agent of the Kansas City Southern, and I don't know of any other arrangement, or of any other agreement that was made at any conference with these gentlemen.

Q. These conferences, Mr. Schaufler, were had at Kansas City, so far as you have referred to them?

A. Yes, at the general offices of the Kansas City Southern.

Q. Do you remember any other occasion outside of Kansas City where this matter was discussed between yourself and any agent of the Kansas City Southern Railroad Company?

A. Yes.

Q. Where?

A. St. Louis.

Q. Who was present and what was said?

55 A. Mr. Smythe, Mr. Catlin and Mr. Forrester. I don't remember which one of the brothers, and myself.

Q. Well, now, tell us in what way this matter of the claim for these overcharges was brought up and by whom at that conversation in St. Louis and state where in St. Louis it occurred?

A. At the Planters or Southern Hotel, I forget which, and at dinner at Faust's I guess.

Q. Tell the thing in your own way what took place there. I won't ask any further questions.

Garnishee objects to the subsequent conversations as mere efforts of the parties to reach some adjustment, and have nothing to do with the arrangement that was made or claimed to have been made by the plaintiff, and were simply interviews and discussions had between them looking to an adjustment of the whole claim.

Objection overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

A. Mr. Smythe went to St. Louis for the purpose of arranging with the competitive lines that run to Texarkana to handle some grain from Kansas City to Texarkana. He had a conference with several of the railroads but I don't know what he agreed upon. He told Mr. Catlin and Mr. Forrester that he would take care of—or rather protect the division of the 8 cent rate on business that was at Kansas City—in the yards at Kansas City, and I think he said also that was in transit at that time.

Q. For these same shippers, is that what you mean? For Forrester Bros.?

A. For Forrester Bros.

Q. When was this meeting, Mr. Schaufler?

A. About Christmas I think.

Q. About Christmas in 1901?

A. It was around Christmas some time—a little after I guess. It was during the holidays.

56 Q. Last Christmas, 1901?

A. 1901, yes sir.

Q. How did you come to go down to St. Louis, at whose suggestion, if anybody's?

A. Mr. Smythe and I went from Kansas City to St. Louis for that purpose.

Q. Were you present when Mr. Smythe made any statement there to either Mr. Catlin or Mr. Forrester with reference to these rates?

A. I was present at what I related above.

Q. Is that all that occurred as far as you can remember at that interview?

A. Yes sir.

Q. Was the question of how much grain was in transit at that time considered between you and Mr. Smythe and these parties?

A. There was at that time, I think, about 80 or 90 cars in the yard at Kansas City.

Q. How did you find that out Mr. Schaufler, and what did you do to ascertain that fact?

A. Through our reports at the office.

Q. Had you done that before you went to St. Louis?

A. Yes.

Q. Was that for the purpose of being considered in this interview with Mr. Smythe, as to how much he would protect at that rate?

A. I thought he might want the information when we got to St. Louis. That was the reason I ascertained how many cars in the yard.

Q. Did you send a telegram to any one down there while that interview was taking place, and if so what was it and to whom?

A. I was not there in an official capacity, merely as a friend to Mr. Fisher, and if I remember correctly I wired to Mr. Geo. M. Enterkin who is freight agent at Omaha.

Q. What was the contents of that telegram? What did you wire?

57 A. Some question about through billing, I believe, or something of that sort, and I can't remember exactly what the contents of the telegram was.

Q. Was there anything in that telegram with reference to what Mr. Smythe said, that he would do on behalf of the Kansas City Southern road with reference to these shipments?

A. I don't remember the contents of the telegram now. It could be gotten from the Western Union, I presume.

Q. But the telegram was sent in pursuance of the statement of Mr. Smythe at that conference, was it not?

A. I don't remember now what it was. It was with reference to this arrangement, or some arrangement regarding the grain.

Q. That was the occasion wasn't it, Mr. Schaufler, for your sending that telegram, or was there any other occasion?

A. That was the occasion for sending it.

Q. That was what Mr. Smythe said at that time in St. Louis?

A. It was something regarding shipments of grain, I don't remember whether it was what Mr. Smythe said, or just what the occasion—I don't know what made the suggestion for sending the telegram.

Q. I will ask you whether you remember that he stated there in your presence and in the presence of these other parties that he would protect this 8 cent rate for all grain that was then at Kansas City or in transit for these shippers?

A. I believe I have answered a question like that.

Q. You may have done it, but I am not sure you did it just in that way. If that is so, say so, and that will be settled. That is so, isn't it?

Q. Give me an answer.

A. Mr. Smythe agreed to protect the division of the 8 cent rate on business that was in the yards at that time, and I think that
58 was in transit, I am not sure about his agreement about the business that was in transit.

Q. Is that the substance of what you remember Mr. Smythe said on that occasion?

A. That is all I can remember that he said on that particular subject.

Q. Now, Mr. Schaufler were there any other meetings after that between any of these parties who were interested in this thing that you were present at?

A. At St. Louis?

Q. Anywhere?

A. Do you mean with the traffic department—any officials of the traffic department?

Q. Either here or in St. Louis, anywhere?

A. Meeting with the officials of the traffic department?

Q. Yes, of the Kansas City Southern.

A. After this meeting?

Q. Yes.

A. Yes.

Q. Well, when and where?

A. At the general offices of the Kansas City Southern at Kansas City.

Q. Can you fix the date, or about the time?

A. Shortly after we returned from St. Louis.

Q. Who was there present?

A. Mr. Catlin, Mr. Fisher, I think Mr. Moore and myself, and Mr. Smythe and Mr. Hanley of the Kansas City Southern.

Q. What was the talk at that meeting?

A. The protection of the 8 cent division of the through rate.

Q. What was said and by whom?

A. I can't exactly recall the conversation that took place at that time, but the other gentlemen can possibly remember most of it.

59 Q. What do you remember?

A. I remember that Mr. Hanley said that the arrangement was in the hands of Mr. Smythe and whatever he agreed upon was satisfactory to him.

Q. Was Mr. Hanley told about what occurred in St. Louis on this subject?

A. I don't think in my presence.

Q. Was any reference made in that conversation, Mr. Schaufler, to the fact that Mr. Smythe had agreed to protect this 8 cent rate?

A. I remember particularly, Mr. Smythe said that Mr. Hanley would see Mr. Knott the President of the road before they could positively agree to adjust the claims on the basis of the 8 cent division of the through rate.

Q. When you speak of an 8 cent division of the through rate, and you have mentioned that a number of times, I would ask you, do you mean that the 8 cents was what the Kansas City Southern Railway Company was to get per hundred pounds for moving the grain south from Kansas City to Texarkana or Shreveport?

A. The 8 cent division of the through rate was 8 cents a hundred pounds allowed to the Kansas City Southern.

Q. That was what the Kansas City Southern was to get for moving the grain from here—

A. What they agreed to accept as a through rate—what they agreed to accept as their proportion from Kansas City south, of the through rate.

Q. In the agreement made between you and other officers?

A. In an arrangement that was agreed upon.

Q. And that was their pay, this 8 cents per hundred for carrying the freight from here south to Shreveport or Texarkana, was it not?

60 A. Yes, the arrangement that we had with them in connection with the Omaha & St. Louis and Kansas City Northern Connecting.

Q. For that service?

A. For the grain that was moved between Kansas City and Texarkana originating at Omaha or points beyond—Council Bluffs and points beyond.

Q. But all the Kansas City Southern was to do for that 8 cents per hundred pounds was to move the grain from Kansas City down to either Texarkana or Shreveport?

A. 8 cents was their proportion of the rate to move the grain from Kansas City to Texarkana.

Q. Now, Mr. Schaufler, were there any further conferences about this matter that you know of after the last you have enumerated?

A. Yes sir.

Q. What was the next?

A. The next was between Mr. Knott the President of the Kansas City Southern, Mr. Hanley the Traffic Manager of the Kansas City

Southern, Mr. Smythe, the General Freight Agent of the Kansas City Southern, Mr. Fisher, Mr. Catlin—I am not sure about those two gentlemen, but Mr. Brimson, General Manager of the Omaha, St. Louis, Kansas City Northern Connecting, Omaha Kansas City & Eastern, and myself.

Q. What was discussed and what was said at that interview?

A. At that interview Mr. Brimson and myself tried to get Mr. Knott to agree to adjust the overcharge made on this grain south of Kansas City.

Q. Do you remember what statements were made or the substance of what was said?

A. Mr. Knott agreed to adjust the overcharge to a certain date, I can't remember what the date was that he agreed upon, but after that he claimed that the divisions were withdrawn by cancellation and that the company wasn't any longer a party to the through rate.

Q. What shipments did those statements of Mr. Knott refer to, if you know?

A. To shipments of grain from Forrester Bros. from Kansas City to Texarkana.

Q. Were those shipments a part of these shipments that we have spoken of here, Mr. Schaufler, about which you contracted?

A. What do you mean? That he agreed to protect—to rather adjust the claims?

Q. Yes, or for which you made a rate here as you have testified?

A. Yes, it was on the business in question.

Q. Was there any other result of that conference except as you have stated?

A. No, that was about all that was done.

Q. Was the matter again mentioned between yourself and any of the Kansas City Southern people in a later conference? If so, when and what was said?

A. I don't remember any after that.

Q. Then I am to understand, Mr. Schaufler, that is the last you know about these transactions?

A. Yes.

Cross-examination by Mr. PRATT:

Q. Who makes rates for railroads?

A. The traffic department.

Q. And who is at the head of the traffic department?

A. Some times the Vice-President who has charge of the traffic.

Q. That depends on what the railroad is then?

A. Yes sir.

Q. It differs with different railroads?

A. Yes sir.

62 Q. You don't mean to say that a man in the position that Mr. Smythe occupied with the Kansas City Southern is always inferentially possessed with the power to make rates absolutely without consulting with any body else?

A. That depends on his instructions from his superiors.

Q. But he is governed by instructions is he not?

A. Yes.

Q. As to rates?

A. As to all of his duties.

Q. What I mean is, a man occupying the position of Mr. Smythe with a railway company isn't by virtue of his position authorized to make any rates he pleases?

A. Rates are usually made by the traffic manager or general freight agent.

Q. Do you know who made them in the case of the Kansas City Southern?

A. They were made by the heads of the traffic department.

Q. That is, I understand you to say, that Mr. Smythe would have the right to make any rate he pleased without consulting with any of his superiors?

A. I don't know what his instructions were. It is usually that way. The traffic department have authority to make rates.

Q. You don't know what it was in this instance?

A. I don't know what his instructions were.

Q. Well, why did you go to see Mr. Hanley about this matter after you returned from St. Louis, if he had agreed to take care of this 8 cent division—If Smythe had agreed to take care of this 8 cent division?

A. Mr. Smythe reports direct to Mr. Hanley, as he is traffic manager.

Q. That doesn't answer my question. Why did you go to see Mr. Hanley in regard to this 8 cent division after Mr. Smythe, as you say, had agreed to protect it when in St. Louis?

A. At the time we called at the general office of the Kansas City Southern, we called on Mr. Smythe, and he came into the room during our conference, and in that way Mr. Hanley was brought into the conference.

Q. And what did Mr. Hanley say at that time in regard to this matter, do you recall? I am speaking now of your first interview after you returned from St. Louis.

A. Said Mr. Smythe had entire charge of that transaction and whatever he would do would be satisfactory.

Q. But you subsequently saw Mr. Knott. Why did you go to see him?

A. Mr. Hanley, as he was leaving the room—I said “Do you mean to say that Mr. Smythe has entire charge of this transaction and whatever he does is satisfactory?” and he said “Well, Mr. Smythe wont do anything to—it was some remark, I can't just recall, but as much as to say that Mr. Smythe wont do anything, or agree upon any basis of adjustment. I can't remember just what the remark was. It may have—

Q. My question was why you subsequently went to see Mr. Knott?

Mr. COSTE: He didn't finish the answer.

The WITNESS: That finished the answer.

Mr. COSTE: May have what?

A. (Cont.) After the remark of Mr. Hanley, Mr. Smythe did not feel as though he had the authority to adjust the matter, and in a later conference that I had with Mr. Smythe, I was advised that the matter was in the hands of Mr. Knott, the president of the road.

Q. And that is the reason you went to see Mr. Knott?

A. Yes.

64 Q. What was your purpose in calling on Mr. Smythe after you returned from St. Louis?

A. Mr. Catlin was in the city and he wanted to see Mr. Smythe regarding the settlement of the claims and I happened to go over with him.

Q. And the matter had not been settled at that time?

A. It had not been settled that I know of.

Q. So that on your return from St. Louis the matter was still open?

A. It had not been settled that I know of.

Q. You say that down at St. Louis Mr. Smythe said that the Company would see that the 8 per cent rate was protected, is that right?

A. Business that passed and that was in the yards at Kansas City.

Q. Now what did he mean by saying the 8 cent rate or 8 cent division of the through rate would be protected?

A. They would accept 8 cents as their proportion of the through rate.

Q. As I understand it this 16½ cent rate was the through rate?

A. Yes.

Q. How could it effect Forrester Bros. or Mr. Fisher whether the Kansas City Southern got 8 cents or 10 cents?

A. The original agreement was that the grain should be billed through, and for some reason that I don't remember at the present time, it could not be billed through. Mr. Moore attended to the detail of the arrangements that were made.

Q. The regular rate from Kansas City to Texarkana was 10 cents, wasn't it?

A. There have been different rates. The rates down there change continually.

Q. You said 16½ cents through rate was the sum of the two
65 locals of 6½ cents on your lines to Kansas City and 10 cents from Kansas City to Texarkana.

A. At that time it must have been that was the rate, but the rates change south of Kansas City.

Q. And on this particular business the Kansas City Southern agreed to accept from your road on this through billing 8 cents as their proportion of this division? That is right?

A. Yes.

Q. That is an agreement between you—that is you representing the Northern roads and the Kansas City Southern, isn't that true?

A. Yes.

Q. How then were Forrester Bros. at all concerned with the rate south of Kansas City?

A. The business wasn't handled in accordance with the original

arrangement, and Mr. Moore knows more about what was done than I do.

Q. The original arrangement, as I understand it, was that the grain should be billed through, is that right?

A. Yes.

Q. That it was on the basis that the grain should be billed through that they got this division?

A. Yes.

Q. Which was agreed to by the Kansas City Southern?

A. Yes, sir.

Q. Was there any new arrangement made after this change in the process of billing that you know of?

A. There was an arrangement made by the employees of the traffic department of the two roads for a settlement of this grain on account of some arrangement that could not be carried out to bill it through.

Q. Do you know anything about that of your own knowledge?

A. Not in detail, only in a general way.

Q. How many days after your trip to St. Louis was it you had this first interview with Smythe and Hanley?

66 A. I don't know the exact number of days. It was shortly after we returned though.

Q. Some time along in the fore part of January?

A. No it was—yes I think some time in January. I am not sure about that. It was shortly after I returned from St. Louis.

Q. You may state whether that agreement for the division of rates between the Northern connecting roads and the Kansas City Southern whereby the latter should accept 8 cents as its share was then in force?

A. My official knowledge is that the divisions were in force until the Wabash Railroad Company took charge of the O. & St. L.

Q. That was about the 1st of November, wasn't it?

A. Yes, some time in November.

Q. What memorandum was made, if you know, of this through rate of $16\frac{1}{2}$ cents granted to Forrester Bros.?

A. I don't remember of any memorandum that was made.

Q. Was there any tariff sheet prepared in the office of the Northern Connecting lines showing this through rate?

A. Yes, there was a memorandum tariff sheet made that showed the divisions of the rate.

Q. There was also a memorandum sheet prepared showing the through tariff, was there not, or joint tariff between Omaha and Texarkana?

A. That is shown in the Trans-Missouri Arbitrary tariff from Omaha to Kansas City, adding the local from Kansas City to Texarkana would make the through rate.

Q. But wasn't a joint tariff sheet prepared in your office and a copy sent to the Kansas City Southern office showing the $16\frac{1}{2}$ cent through rate?

A. Not to my knowledge.

67 Q. You say, however, a tariff sheet was prepared showing the division of the rates, in your office?

A. It was a memorandum only,—a memorandum division sheet.

Q. Now what, if anything, was there on that memorandum division tariff sheet as you call it, which showed how long this division was to continue in effect?

A. I don't remember the exact date, but I think copies can be obtained.

Q. How long is it since you have seen a copy of that sheet?

A. A day or two ago, but I don't remember the date.

Q. Do you remember there was a date provided in that sheet for the expiration of this division arrangement?

A. I think there is a date on it. Mr. Moore may be able to tell about it.

Q. You think there is a date on it which shows when the division arrangement was to expire, is that right?

A. As I understand, the cancellation of that memorandum division sheet was made on account of the Omaha & St. Louis going into the hands of the Wabash.

Q. I am not asking why it was there, I am asking if it was there?

A. I think there is a date on the division memorandum sheet.

Q. That is, you think there is a date on the division memorandum sheet which shows when the division is to expire?

A. I think so.

Q. But if I understand rightly, you don't remember what that date was?

A. I don't remember the date.

Q. Who prepared that memorandum division sheet, as you call it?

A. They are usually prepared by the rate clerk.

Q. Under whose directions?

A. Under the Chief Clerk who gets his instructions from the Assistant General Freight Agent.

68 Q. That would be yourself in this case?

A. No, from Mr. Moore.

Q. What was the Trans-Missouri Arbitrary, as you call it, at that time?

A. I think 6½ cents.

Q. That is, the Trans-Missouri Arbitrary at that time was 6½ cents from Omaha to Kansas City on your line?

A. I think that is what it was at that time.

Q. And under this division memorandum you were to get 8½ instead of 6½ cents for this business and the Kansas City Southern was to get 8 instead of 10 cents for its work in carrying the grain from Kansas City to Texarkana, is that right?

A. The memorandum division sheet would show that.

Q. In other words you were to get more under this division and the Southern was to get less than the regular rate theretofore in existence, is that right?

A. Whatever the arrangements were would show on this division sheet.

(Question withdrawn.)

Q. That would be the best evidence of it, what the agreement was, wouldn't it?

A. The sheet was prepared by Mr. Moore or he has given instructions to the proper parties in the office to prepare this sheet and he knows more about it than I do.

Q. You say at the time you and Smythe went to St. Louis about Christmas time, that some 80 or 90 cars of grain were in the yards here, do you mean the yards of the Northern roads?

A. I mean in the yards in Kansas City. I don't remember exactly what yards.

Q. What was the reason they hadn't gone forward, do you know?

A. If I remember correctly,—No, I don't know.

69 Q. Well, this grain had been there in the yards how long, have you any idea?

A. I don't know.

Q. Do you know at what time it had been shipped from Omaha?

A. No sir.

Q. Do you know whether it had been shipped before the Wabash took control of the Northern road?

A. Possibly some of it, I am not sure.

Q. Was it your idea that—or what you were attempting to do to get that stuff re-billed from Kansas City to Texarkana at an 8 cent rate?

A. Mr. Moore knows more about the detail of the billing.

Q. I know, but you said you went to St. Louis with Mr. Smythe to straighten out this matter. Now was one of the purposes of your visit to try to induce Mr. Smythe to re-bill this stuff from Kansas City to Texarkana at an 8 cent rate?

A. I don't know about the re-billing, it was merely that he promised to protect an 8 cent division of the through rate on business that was in the yard—cars that were in the yards.

Q. Do you know how these cars that were in the yards had been billed? Had they been billed through or not?

A. I don't know.

Q. If they had been billed through they would not have been waiting in the yards, would they?

A. I don't know.

Q. Down here in the yards in Kansas City?

A. I don't know.

Q. Did you undertake to inform yourself before you left Kansas City for St. Louis as to how this grain had been billed into Kansas City? In other words, did you know anything about the transaction then, in that respect?

70 A. No, I didn't try to ascertain how it was billed in there.

Q. Do you mean to be understood, Mr. Schaufler, as saying in behalf of the Northern Connecting lines at the time you were associated with them in an official capacity, you contracted for Forrester Bros. to carry any particular, specified definite amount of grain from Omaha to Texarkana? Do you want to be understood as saying that?

A. The arrangement at the time I first saw Mr. Hanley and Mr.

Smythe was for a considerable amount of grain to be shipped from Omaha to Texarkana. Shortly after the arrangement was made I had a telegram, or letter from Mr. Fisher, that he wanted four or five hundred cars at once. I called to see Mr. Hanley and we went to Mr. Rawlin's office, he was in some official capacity of the Kansas City Southern Railroad Company, and in his office we saw there either his clerk or some one that was in charge of the office when he was not there—in his absence, and they agreed to give us cars as fast as they could, for this shipment of grain that was to be shipped—that was about to be shipped.

Q. My question is whether you agreed with Forrester Bros. to accept and transport on this through rate any specified, definite amount of grain?

A. None other than making a request for cars, and at the time I informed them that the grain was bought and contracted for, and they were anxious to get it shipped as soon as possible.

Q. You knew then at that time that they had bought and contracted to sell some amount of grain, is that right?

A. At that time they — a requisition in for—

Q. No, no, no. What I mean is at the time—

Mr. COSTE: Let him answer — his own way.

Q. I am speaking of before the time the requisition was
71 in. At the time you made the through rate of 16½ cents that you speak of, at that time did they tell you any definite specified amount of grain that they expected to ship under that rate?

A. At the time the arrangement was made with the Kansas City Southern Mr. Fisher, *Mr. Fisher* told me that he thought he could contract a considerable amount of grain to be shipped at once. A short time after the arrangement was completed he made a requisition for these cars.

Q. But at the time you quoted him that through rate of 16½ cents from Omaha to Texarkana, he didn't tell you any definite amount of grain that he wanted to ship under that rate?

A. Only said there would be considerable grain, which I told the Kansas City Southern at that time, and when I made the arrangement with them.

Q. That was as near as you came to being definite. He said the amount would be considerable, is that right?

A. Yes, be a considerable amount of grain. He thought he could contract for considerable amount of grain and shortly after he made the requisition for cars.

Q. Did Mr. Fisher at that time say anything as to the length of time over which these shipments would extend?

A. No, but he had—or at least he made a requisition for cars to the amount of about 500 in, I imagine, two or three weeks.

Q. Was there anything said by you to Mr. Fisher or any representative of Forrester Bros. as to the length of time that this rate should continue in force?

A. Not that I remember of.

Q. Now this rate of 16½ cents was no concession at all, was it, to Forrester Bros.?

Mr. COSTE: That is asking for the conclusion. The question ought to be as to the facts, whether it was a concession or not to appear from the facts.

Q. In as much as it was the sum of the two locals, they could have shipped all the grain they wanted to without getting any such rate from you at that same price.

A. I think the rate south of Kansas City was raised from—as high as 14 cents.

Q. I am speaking of the time at which this 16½ cent rate was quoted by you to Forrester Bros.?

A. The original arrangement wasn't carried out and the detail of the divisions and rates was handled by Mr. Moore. There was some question about the through billing and one thing and another that I am not thoroughly familiar with.

Q. You say the original arrangement was not carried out. Will you please tell what the original arrangement was?

A. It was to be billed through, which was not done in some cases.

Q. When the Kansas City Southern acceded to this division by which they were to receive 8 cents as their proportion from Kansas City south, it was understood that the stuff was to be billed through, wasn't it?

A. Yes, the arrangement was to bill it through at that time, but there was some other arrangement later on.

Q. Do you know anything about these other arrangements?

A. No. Mr. Moore does.

Q. If you quoted a through rate at 16½ cents and the business was to be received by your road and billed through at that rate from Omaha and points north to Texarkana and the Kansas City Southern agreed to accept 8 cents as their proportion, the Northern lines represented by you would be the beneficiary of that agreement, would they not, and not Forrester Bros.?

A. The original arrangement was not carried out.

Q. Not at all?

A. It might have been in some cases, but when it was ready to go into effect, there was some difficulty that was adjusted by Mr. Moore and the officials of the Kansas City Southern.

Q. Will you explain, Mr. Schaufler, how Forrester Bros. were benefitted by this agreement, if the Kansas City Southern did accept 8 cents as their share of this division of the through rate of 16½ cents?

Q. I am speaking of the original arrangement made.

A. But it was not carried out.

Q. Was it changed with the consent of the Southern and your road?

A. It was changed in the way of handling the transaction, and I don't exactly know how it was arranged.

Q. Who were the parties to this change in the method of handling the business?

A. I don't know all of them. Mr. Moore, as being in charge of the office and detail work of the office, might know.

Q. Did you inform Forrester Bros. the stuff was to be billed through when you made this arrangement with them of 16½ cent rate?

A. I didn't personally, and I don't know whether they had been informed, or whether the arrangement was in such shape that they could be notified.

Q. Did they ask you at all as to how it should be billed under this arrangement that you made with them in the first instance?

A. They may have addressed a letter to the office and it may have been opened by the chief clerk or Mr. Moore. I was not asked directly.

Q. Was the only change that you know of that was made in the original agreement the change in reference to billing?

74 A. I don't know. I don't exactly know what the changes were. Whether there were any other changes made other than billing, I don't know.

Q. When you went down to St. Louis did you go there with the understanding that the Southern had not lived up to its agreement in respect to this grain? If so, what was the agreement they hadn't lived up to?

A. I understood there was an overcharge of some sort, and the idea was to get the Kansas City Southern to agree to the 8 cent division of the through rate.

Q. You understood there had been an overcharge. Who did you understand it from?

A. Forrester Bros. or Mr. Fisher.

Q. And you understood that at that time there was an agreement on the part of the Southern to accept an 8 cent division of the through rate, did you?

A. During the conference between——

Q. Answer my question please. It is a plain question.

A. During the conference with Mr. Smythe, Mr. Fisher, and Mr. Catlin and myself the question was talked about and they all know more about what the arrangement was. I was not present at the entire conference.

Q. As a matter of fact you don't know whether there was any agreement on the part of the Southern to accept an 8 cent division of the through rate from Omaha to Texarkana after you quit the so-called Northern lines, do you?

A. Forrester Bros. claim that the grain was contracted and sold on that basis and they couldn't get cars to complete their contract, and on that account I requested the Kansas City Southern to adjust their claims on that basis.

Q. Did you understand the basis of their claims was this original agreement of an 8 cent division, which had not been carried
75 out—the terms of which had been altered, as you have testified?

A. I don't know what the arrangement was of settlement of these claims after the original arrangement was not carried out.

Q. So that you don't know under what agreement Forrester Bros. were claiming an overcharge at the time you went down to St. Louis?

A. No, they could tell you on what basis they made their claim.

Q. You don't know it, is that right?

A. I know from the conferences I have been in that they based their claim on an 8 cent basis south of Kansas City.

Q. That is you understood that from what Forrester Bros. told you?

A. From conferences I have been in between Forrester Bros. or their representatives and the representatives of the Kansas City Southern.

Q. What I am getting at is this, Mr. Schaufler, on the basis of what agreement, if you know, were Forrester Bros. making this claim? Was it on the basis of the original agreement which you say was not carried out, or on some subsequent agreement, or don't you know?

A. In the conferences they claimed they bought and sold this grain, and were unable to get cars sufficient to move it as fast as they had contracted.

Q. Did Forrester Bros. state in reliance upon what contract with the railroads, they bought and sold this grain?

A. I don't know exactly under what arrangement of adjustment, or agreement of payment of freight was agreed upon after the original arrangement was not carried out.

Q. Well, then, the long and short of it is you don't know upon the basis of what agreement Forrester Bros. were making this claim for over-charge at the time you went to St. Louis?

76 A. I think I have answered that question.

Q. Answer it once more and that is all.

A. They made their claim on the basis of the division of 8 cents of the through rate.

Q. But that basis was not the original agreement was it?

A. The original agreement was of no effect.

Q. Exactly?

A. Not carried out.

Q. And you don't know what the second agreement was?

A. I don't know what the agreement for a settlement of freight was. Mr. Moore knows more about that than I do.

Q. Do you know of your own knowledge there was an agreement by the Kansas City Southern to accept 8 cents for its proportion of the freight on these shipments, after the original agreement was not carried out?

A. Oh yes, they agreed to accept 8 cents for their proportion of the haul, or rather 8 cents of the division through rate for their proportion of the haul.

Q. When did you have that agreement with them?

A. That agreement always was in effect, only I don't know how it was arranged for settlement when the original agreement was not carried out for the handling of the business.

Q. You don't claim then you had any second agreement with them at all, so far as you know?

A. Oh no, the agreement—the original agreement was carried

out, but I don't know how it was agreed for in payment of the freight?

Q. What do you mean by that?

77 A. I mean by that I don't know whether they agreed to re-bill the grain south of here and accept—or if they were to collect direct from Forrester Bros., or whether it was to be prepaid, or to be collected at either end.

Redirect examination by Mr. COSTE:

Q. When you got this rate from the Kansas City Southern, Mr. Schaufler, what did you say to them—that is their traffic manager or general freight agent, with reference to the lot of grain which Mr. Fisher wanted to move, in describing it?

A. When it was agreed on this arrangement I advised them that Mr. Fisher could do considerable business, at least he thought that he could.

Q. Was four or five hundred cars or some such thing mentioned as indicating about the size of the lot——

A. Shortly after the arrangement was completed, Mr. Fisher advised me he wanted four or five hundred cars.

Q. Did you tell the Kansas City Southern people that in giving them an idea of the amount that was to be shipped?

A. I went to the Kansas City Southern office and saw Mr. Hanley and explained to him what was wanted, and Mr. Hanley himself and myself went to Mr. Rawlin's office and made a request for the cars. They advised us they could not furnish the required number of cars, but they would give us cars as fast as they could.

Q. That had been stated to them when you made your rate, had it not?

(Question withdrawn.)

Q. I will ask you whether or not that had been stated to the traffic manager and general freight agent of the Kansas City Southern by way of explanation, when the rate was agreed upon between you?

78 A. When the arrangement was made I told Mr. Hanley and Mr. Smythe that Mr. Fisher claimed he could do considerable business.

Q. And it was Mr. Fisher's grain, or the grain he represented that was under discussion at the time?

A. Forrester Bros. grain.

E. H. SCHAUFLEER.

Subscribed and sworn to before me this 14th day of November, 1902.

[SEAL.]

JAMES A. SMITH,
Notary Public, Jackson County, Missouri.

79 The plaintiff to further maintain the issues on its part also read in evidence the deposition of Louis E. Moore, taken at the office of Gooding & Murray, Law Stenographers, and Notaries,

rooms 921 & 922 New York Life Building, Kansas City, Missouri, in the same case the preceding deposition of E. H. Schaufler was taken, and read same to the jury:

LOUIS F. MOORE, of lawful age, being produced, sworn and examined on behalf of the plaintiff, deposeth and saith:

Direct examination by Mr. COSTE:

Q. State your name in full?

A. Louis F. Moore.

Q. Mr. Moore what is your business now?

A. I am General Freight Agent of the Q. O. & K. C. Roads.

Q. What was your business during last year—I mean during 1901?

A. I was assistant general freight agent of the Northern lines.

Q. You know Mr. Schaufler who has been testifying here?

A. Yes.

Q. You have heard all of his testimony?

A. Yes.

Q. You know Mr. C. V. Fisher who is present?

A. Yes.

Q. Do you remember these grain shipments that have been referred to in Mr. Schaufler's testimony?

A. Yes.

Q. Please state, Mr. Moore, as briefly as you can, what you had to do with these matters, taking them up from the beginning?

A. I merely handled the details of it under Mr. Schaufler's instructions, as to the mode and manner of handling the billing and taking care of it.

Q. Had you anything to do with making rates as between your road, the Omaha & St. Louis, is it?

A. Yes.

Q. And the Kansas City Southern for these shipments?

A. No.

80 Q. That was done by Mr. Schaufler?

A. Yes.

Q. You have heard Mr. Schaufler state that there was an original arrangement made between your road and the Kansas City Southern for the through billing of these shipments which Mr. Fisher represented for Forrester Bros. and Mr. Schaufler referred to you as far as the modification of that arrangement is concerned. Please state what you know about that and what was done, if there was anything?

A. The understanding was on this business it was to be way-billed through from Council Bluffs or Omaha to Texarkana, but we found it impracticable, the agents could not handle it in that manner, the main reason being the grain originating—the greater part of it, north and east of Council Bluffs, it was way-billed through to Kansas City from foreign lines and we couldn't interrupt that billing.

Q. Was this discussed between you and the Kansas City Southern?

A. Yes sir.

Q. Was that fully known to the freight agent and traffic manager of the Kansas City Southern?

A. Yes sir.

Q. And they went on with the shipments in the other way, did they?

A. There was very little of it moved, if any at all, as originally intended.

Q. Now Mr. Moore, were you present at any of these conferences between Mr. Schaufler, Mr. Fisher or Mr. Catlin and any of the Kansas City Southern people—that is their freight people, the traffic manager and general freight agent?

A. I was at a more recent date. That is after the control of the O. & St. L. had passed to the Wabash.

Q. So far as that conference related to these shipments here of the Forrester Bros. grain, represented by Fisher, please state what occurred in your presence?

81 A. The result?

Q. With reference to what Mr. Schaufler has called the adjustment of these freight rates on the contract basis?

A. As I understood it, Mr. Schaufler was acting in a friendly capacity regarding the matter. He had made this quotation to Forrester Bros., and it had never been withdrawn, and it was understood by me that they had gone ahead contracting business, or had already contracted and shipped on the basis of this 8 cent rate south, and they wanted to know if the Kansas City Southern would protect them in it. Mr. Smythe said that he would.

Q. You understood, on behalf of your road, that this was a certain lot, did you not, of grain that Mr. Fisher expected to move down, and for which he needed a considerable number of cars?

A. Yes.

Q. I will ask you whether you know that the Kansas City Southern freight people, or their freight agent, knew that fact also?

A. I think they understood. There was a large volume of it had moved in October.

Garnishee moves to strike out answer that they understood, as a mere conclusion of the witness.

Motion sustained by the court. To which ruling of the court plaintiff at the time duly excepts.

Q. They knew it was a large quantity?

A. I took it for granted, but I was not in the conference in the arrangement originally.

Garnishee moves to strike out last answer of witness as not responsive, a mere conclusion of the witness, his judgment not based on any knowledge of it.

Motion sustained by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

82 Q. Was any further or later conference than the one you have mentioned, in which this same subject was discussed?

A. Yes.

Q. When was that?

A. I couldn't tell the time, but it was some time in November or December.

Q. What was the substance of what was said and what was agreed?

A. It amounted to the same thing as our other conference, about the same subject.

Q. What was said? Give it to us briefly, at the last conference, and who was present?

A. Well I think Mr. Fisher and Mr. Catlin.

Q. And who representing the Kansas City Southern?

A. Mr. Smythe, and then Mr. Schaufler and myself.

Q. Mr. Hanley there?

A. No, I think not. We simply went over the ground with him. Mr. Fisher explained to him that the business would have been moved during October or September, but owing to a shortage of cars they were not able to move it, and that they should protect him, and Mr. Smythe agreed with him. I was merely there in a friendly capacity, not an official capacity as far as any road was concerned.

Q. Was that all you know about it, or is there anything else I have not asked about?

A. I think Mr. Schaufler has covered everything I know about it.

Cross-examination by Mr. PRATT:

Q. Mr. Moore, do you know whether the tariff rate sheet was prepared in the office of the Northern lines?

A. There was no tariff prepared.

83 Q. Was there any memorandum rate sheet prepared in your office?

A. There was.

Q. Who prepared it?

A. I think our tariff clerk did, although it was not under instructions.

Q. Was a copy of it sent to the Southern?

A. I think so, but it was not for general distribution.

Q. That showed a through rate of 16½ cents?

A. This memorandum?

Q. Yes.

A. Yes.

Q. That was the sum of the two locals?

A. No, that was not made up exactly that way.

Q. It was the sum of the two locals?

A. I cannot tell you, I don't know what the local was from Kansas City to Texarkana.

Q. You say that it was not made up exactly the sum of two locals, how do you know that?

A. Because the Trans-Missouri Arbitrary is not the local rate, it is merely a division, and you can't base a rate on a division.

Q. But this memorandum tariff sheet that was prepared showed a through rate of 16½ cents from Omaha and points north to Texarkana. Did you send a copy of that to the Southern?

A. I should judge so, but not to my knowledge, however.

Q. Do you know whether on that memorandum tariff sheet there was any expiration date of that through rate given?

Plaintiff objects for the reason the memorandum sheet is the best evidence.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. What year?

Plaintiff objects for the reasons above given.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

84 Q. What does that mean when it appears on a memorandum tariff sheet?

Mr. COSTE: Objected to, it speaks for itself, what it means.
Objection sustained.

Q. In the absence of anything else, or a new tariff being made or a new agreement being made therein the rate would expire on that date, would it not?

Plaintiff objects: Calling for a conclusion and opinion and the rate itself should show; referring to a written instrument.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. Was any tariff memorandum prepared in your office at a subsequent date showing this through rate?

A. Not that I am aware of.

Q. Do you know whether the Kansas City Southern Railway prepared and sent to your office a memorandum of the division of that rate of 16½ cents?

A. I have no record of it.

Q. Was there a division sheet of that tariff of 16½ cents prepared in your office?

A. I believe so.

Q. Do you know what the division is that that sheet shows of this 16½ cent rate, how much to you and how much to—How much to the Northern lines and how much to the Kansas City Southern?

A. I have never given a tariff or division sheet in that. It was issued under a misapprehension and was not as far as we are concerned, an official document. It was issued by the tariff clerk through error and I never knew of its existence until a short time ago.

Q. What was the error?

A. In getting it out at all.

Q. It was not intended to get it out?

A. No.

85 Q. Do you know whether this division sheet, as you call it, had on it any date showing the expiration of this division agreement?

Plaintiff objects as not the best evidence.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. The date was on the face of it?

A. It would not necessarily be. I could not state whether that was on it or not, but it would not be necessary.

Q. Do you know whether this special tariff sheet or through rate tariff that was made and quoted by Mr. Schaufler was filed with the tariff commission as required by the Interstate Commerce law?

A. I think not. I would like to make a little explanation if you will allow me to.

Q. You are entitled to make any explanation you want to.

A. The rate of 16½ which you state is covered by the tariff, I don't regard that as an authorized tariff, being only a special memorandum.

Q. You know what the through tariff was between Omaha and Texarkana at that time?

A. I could give you the normal rate.

Q. What is the normal rate?

A. About 20½ cents.

Q. What do you mean by the normal rate?

Plaintiff objects as incompetent, irrelevant and immaterial, and the tariffs themselves are the best evidence.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. The prevailing rate, the basis published in their regular authorized tariffs.

Q. Do you mean to say the open or published rate at that time was 20½c.?

A. To the best of my belief, yes.

L. F. MOORE.

Subscribed and sworn to before me this 15th day of November, 1902.

JAMES G. SMITH,
Notary Public.

86 STATE OF MISSOURI,
County of Jackson, ss:

I, James G. Smith, Notary Public within and for the County of Jackson and State of Missouri, do hereby certify that E. H. Schaufler and L. F. Moore were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed as above set forth, were reduced to writing in my presence by M. A. Gooding, who is not interested in the suit, and in the presence of the witnesses and was respectively subscribed by the said witnesses in my presence, and were taken at the time and place in the annexed notice and agreement specified; that I am not counsel, attorney or relative of either party or other

wise interested in the event of this suit, and commenced and continued by adjournments from day to day as above stated.

[SEAL.]

JAMES G. SMITH,
Notary Public, Jackson County, Missouri.

My commission expires August 8th, 1903.

I do hereby certify that there are 150 folios in above deposition, the legal fee for which is 15c per folio.....	\$22.50
Three jurats at 50c each.....	1.50
Two subpoenas at 25c each.....	.50
Two witnesses sworn 5c each.....	.10
Postage and registered postage.....	.24
Total	\$24.84

All which amounts were paid by plaintiffs.

JAMES G. SMITH,
Notary Public.

87 In the District Court of Crawford County, Kansas, Sitting at
Pittsburg.

C. H. ALBERS COMMISSION COMPANY (a Corporation), Plaintiff,
vs.

ROBERT L. FORRESTER and JOSEPH M. FORRESTER, Partners, Doing
Business under the Style and Firm Name of Forrester Brothers,
Defendants; Kansas City Southern Railway Company (a Corporation), Garnishee.

To the Above Named Defendants, and to the Kansas City Southern
Railway Company, a Corporation, Garnishee:

You are hereby notified that depositions of sundry witnesses to be used as evidence in the above entitled action in behalf of the plaintiffs, on the issues between them and the said garnishee, will be taken at the office of Gooding & Murray, Law Stenographers and Notaries, rooms 921 & 922 New York Life Building, Kansas City, Mo., on the 10th day of November, 1902, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, and that the taking of said depositions, if not completed on that day, will be adjourned from day to day, at the same place, and between the same hours, until completed.

J. M. WAYDE AND
PAUL E. COSTE,
Attorneys for Plaintiffs.

Service of the above notice is hereby acknowledged this 6th day of November, A. D. 1902.

CYRUS CRANE,
W. J. WATSON,
*Attorneys for the Kansas City Southern Railway
Company, a Corporation, Garnishee.*

Filed Jan. 23" 1903.

C. E. WOODBURY, *Clerk*.

Opened by request of attorney of plaintiff M'ch 6, 1903.

C. E. WOODBURY, *Clerk*.

88 Plaintiff now offers in evidence deposition of Robert L. Forrester, as follows:

In the District Court of Crawford County, Kansas, Sitting at
Pittsburg.

C. H. ALBERS COMMISSION COMPANY (a Corporation), Plaintiff,
vs.

ROBERT L. FORRESTER and JOSEPH M. FORRESTER, Partners, Doing
Business under the Style and Firm Name of Forrester Brothers,
Defendants; Kansas City Southern Railway Company (a Corpora-
tion), Garnishee.

To the Above Named Defendants, and to the Kansas City Southern
Railway Company, a Corporation, Garnishee:

You are hereby notified that depositions of sundry witnesses to
be used in evidence in the above entitled action in behalf of the
plaintiff will be taken at the office of Paul F. Coste, at room 318 in
the Security Building, Number 319 North Fourth Street, in the
City of St. Louis, in the County of St. Louis, and the State of Mis-
souri, on Friday June 6th, A. D. 1902, between the hours of eight
o'clock in the forenoon and six o'clock in the afternoon of that day,
and that the taking of said depositions, if not completed on that day,
will be adjourned from day to day, at the same place, and between
the same hours until completed.

PAUL E. COSTE,
J. M. WAYDE,
Attorneys for Plaintiffs.

Service of the above notice is hereby acknowledged this second
day of June A. D. 1902.

CYRUS CRANE,
W. J. WATSON,
*Attorneys for the Kansas City Southern Railway
Company, a Corporation, Garnishee.*

89 (Omitting Caption.)

STATE OF MISSOURI,
City of St. Louis, ss:

Depositions of sundry witnesses taken by and before me, H. H.
Oberschelp, a Notary Public within and for the City of St. Louis in
the state of Missouri, at the office of Paul F. Coste, Esq. at room
318 in the Security Building, number 319 North Fourth street in

the city of St. Louis, State of Missouri, on Friday, June 6th, 1902, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of that day pursuant to the annexed notice, to be read in evidence in behalf of plaintiff in the said action as stated in the above named caption now pending in the District Court of Crawford County, Kansas, sitting at Pittsburg.

Appearances: Mr. Paul F. Coste appeared in behalf of the Plaintiff, and Mr. Cyrus Crane of Kansas City appeared in behalf of the Garnishee.

ROBERT L. FORRESTER, of lawful age, being first by me duly examined, cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, deposeeth and saith:

Direct examination by Mr. PAUL F. COSTE:

Q. State your full name, residence and occupation?

A. Robert L. Forrester; St. Louis, Missouri; up until March 3rd I was in the grain business—commission business.

Q. Under what name were you doing business up to March 3rd?

A. Forrester Brothers.

Q. And of whom is that firm composed?

A. R. L. and J. M. Forrester.

90 Q. How long had that firm done business in St. Louis here?

A. I think about three years, or some thing like that.

Q. During that time it was always composed that same way, that is, of your brother whom you have mentioned, and yourself?

A. Yes sir.

Q. What business did you do? What kind of business?

A. The handling of grain of all kinds.

Q. I will ask you whether your firm, in the later part of the year 1901, had bought some corn and oats in the Council Bluffs neighborhood, and sold the same to parties in Texarkana and that neighborhood, and had arranged for the transportation of the grain over the northern connecting lines which come into Kansas City from Council Bluffs, and the Kansas City Southern Railway Company from Kansas City down?

A. Yes sir.

Q. Can you state approximately about how many cars there were to be moved between say August of last year and the time when these shipments were discontinued?

A. I don't believe I can.

Q. Who acted for your firm in these matters?

A. C. V. Fisher of Omaha and E. F. Catlin of St. Louis.

Q. Then do I understand you that these gentlemen are more familiar with the details as to these purchases, sales and shipments I have referred to than yourself?

A. Yes sir.

Q. From the details which these gentlemen reported to you, you made entries, of course, in the usual course of business?

A. The bookkeeper did, yes sir.

Q. All of that business was done for and in the name of
91 your firm, Forrester Brothers, was it not?

A. Yes sir.

Q. What occurred, Mr. Forrester, in the way of difficulties in the moving of these shipments from the Council Bluffs neighborhood down say to Texarkana, where the grain was sold?

(Objection withdrawn.)

Q. If you do not know anything about this matter at all, yourself, personally, say so.

A. I don't know much about this of my own knowledge.

Q. Who had charge of your business, who would know as to what occurred with reference to these shipments?

A. Mr. Fisher of Omaha and Mr. Catlin of St. Louis, the same parties mentioned above.

Q. Did you know of a claim, Mr. Forrester, that was made on behalf of your firm against the Kansas City Southern Railway Company for overcharges which were prepaid by your firm, or its agents?

A. Yes sir.

Q. On shipments from Kansas City to Texarkana?

A. Yes sir.

Q. What did the road do with reference to that claim? What response was given you, as to whether it would be recognized and paid, or not?

A. It never has been paid.

Q. Your firm, then, has that claim now, as it was presented against that road?

A. Yes sir.

Q. Do you know the total amount of the claim as presented to the road on behalf of your firm?

A. I may miss it a few dollars, but it is over Twenty-nine Thousand Dollars.

Q. That, I believe, had been put into the shape of statements, with the vouchers annexed, and presented for allowance to the railroad?

92 A. Yes sir.

Q. Do you know who presented that for your firm to the railroad—what persons?

A. Mr. Fisher and Mr. Catlin.

Q. Have you at any time, Mr. Forrester, had any conversation with any representative of the Kansas City Southern Railway Company with reference to the adjustment of this matter, and if so with whom?

A. I had a conversation with a Mr. Smythe.

Q. Where?

A. At the Planters Hotel first; and at Faust's when we were over there for supper.

Q. In the city here?

A. Yes sir, in St. Louis.

Q. Who is Mr. Smythe, and what is his connection with the Kansas City Southern Railway Company? What officer is he?

A. He is the general freight agent.

Q. When was that?

A. That was the latter part of December, I think, or the first of January.

Q. December of last year, and the first of January of this year?

A. Yes sir.

Q. State what that conversation was?

Garnishee objects for the reason that the testimony of witness already given shows that he was endeavoring to adjust some claim that he had presented, or he had against the Kansas City Southern Railway Company, and efforts to make a settlement in *controversion* of law are not admissible in the trial of a case.

Objection overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

A. I was introduced to Mr. Smythe at the Planters by Mr. Catlin. It was in the latter part of December or the first of January; I asked him if he was going to take care of us, to take care of our grain, and

93 he said he would be able to take care of what cars we had in Kansas City and between Kansas City and Council Bluffs; that he would do that anyway, and would do more if he could.

And that was about all that was said at the Planters. Then we went up to supper at Mr. Faust's restaurant. Mr. Schaufler was at supper there with us. Mr. Schaufler, Mr. Smythe, Mr. Catlin and myself had supper together. After supper, when Mr. Schaufler and Mr. Smythe were ready to go home I said to Mr. Smythe for the second time, "you are sure you are going to be able to take care of us?" and he said "yes, on what cars are at Kansas City and between Kansas City and the Bluffs."

Q. Meaning Council Bluffs?

A. Yes sir, Council Bluffs. "And if we can do more, we will do it" he said.

Q. All cars that were between Kansas City and the Bluffs, and all cars that were in Kansas City?

A. Yes sir.

Q. You understood from what Mr. Smythe said to you, didn't you, that all cars that were anywhere between the shipping place and the destination—that is in transit?

Garnishee objects for the reason it is calling for a conclusion of the witness.

Objection overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

A. Yes sir; he also said at the Planters House, to me, that that was what he was down here for at that time.

Q. That is what he came down to St. Louis for?

A. Yes sir.

Q. What did he say to you in those conversations, Mr. Forrester, with reference to his having made inquiry of your commission

house at Kansas City, or through that house, of the number of cars that were then in transit for you?

A. I think he asked the question about how many cars there were between Kansas City and Council Bluffs.

94 Q. In transit?

A. Yes sir, in transit.

Q. Do you recollect now his having made any statement that before coming down here he had ascertained the number of cars, or tried to?

A. No sir, I do not remember that.

Q. Do you remember what you told him in answer to his question to you as to the number?

A. I told him I thought between two and four hundred.

Q. In transit?

A. Yes sir.

Q. Did he say anything to question the correctness of that statement, at that time?

A. No sir, I think not.

Q. When you say that you asked Mr. Smythe, and Mr. Smythe assured you that he would take care of you, what do you mean by that expression—as to the freight rate at which he was to take care of you, and what he was to do with reference to the movement of grain?

Garnishee objects, as leading and suggestive, calling for an opinion and conclusion of the witness, and calling on him to decide a matter that the jury should decide from the language used.

Objection overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

A. On the basis of eight cents rate.

Q. What, if anything, did you say to Mr. Smythe in that interview, as to other grain, outside of that in transit, which you had and expected to ship down over that road—grain that had been bought or contracted for by you, with a view of selling to southern parties, or had already contracted to sell to southern parties?

A. It was understood that he was to protect us the same as he had on the other.

Q. Was there any other grain at that time, outside of the grain in transit?

A. Yes sir.

95 Q. Did you mention that fact to him?

A. I did.

Q. About how much was that, that you then had to ship, outside of what was in transit?

A. I think about four hundred cars.

Q. As to the exact amount of these shipments, outside of the matters in transit, and also as to the cars then in transit, from what you have answered before I presume Mr. Fisher and Mr. Catlin would be better posted than yourself?

A. Yes sir.

Q. When did you next see Mr. Smythe or any officer of the Kansas City Southern?

A. I don't think I have seen him since.

Q. That was the last and only conversation you had with any of the people representing that road, on this subject?

A. Yes sir, the last and first.

Q. And after that interview Mr. Smythe left the city, did he?

A. Why we went with him to the street car and he said he was going home to Kansas City.

Q. With reference to all matters connected with the shipment of this grain between Council Bluffs and Texarkana, and the adjustment of overcharges on freight and the transfers from Kansas City south, who had authority to act for the firm of Forester Brothers?

A. Mr. Fisher and Mr. Catlin, together. They attended to the whole thing.

Q. The matter was entirely in their hands?

A. Yes sir.

Q. Had they as full authority as yourself would have had in taking care of these shipments up there?

A. I had nothing to do with it.

Q. Every thing was left to them?

A. They had entire charge of everything up there; everything was left to them.

96 Cross-examination by Mr. CYRUS CRANE:

Q. When you saw Mr. Smythe here in St. Louis and had dinner with him at Faust's, Mr. Schaufler was also present?

A. Yes sir, at Faust's.

Q. But he was not present when you talked at the Planters Hotel?

A. No sir.

Q. Just exactly what did you say to Mr. Smythe when you saw him at the Planters? I want the full conversation as nearly as you can recall it, Mr. Forrester.

A. I don't know that I can tell you the full conversation; many little things were probably said.

Q. I mean pertinent to this question?

A. I simply asked Mr. Smythe if he was going to be able to take care of us. I had reference to the cars of grain that were in Kansas City and between Kansas City and Omaha and points where we had purchased grain. He said he would take care of us on what grain was in Kansas City, what cars I mean, and also between Kansas City and Omaha—or the Bluffs; I believe it was Council Bluffs.

Q. That is as fully as you can recall the conversation at the Planters Hotel?

A. That is about all, yes sir—then at the Planters he said he was down here for that business, that day.

Q. That he was down here in St. Louis for that business?

A. Yes sir.

Q. At that time, as I understand you, you had already made up your claim and sent in to the Kansas City Railway Company? At

least I understood your testimony that way, in answer to Mr. Coste's question?

A. I don't think I said we had made up any claims.

Q. When were those claims made up, if you know?

97 A. I could not say. Mr. Fisher and Mr. Catlin had charge of that.

Q. In understood Mr. Coste to ask you if you saw anybody connected with the Kansas City Southern Railway Company about the settlement or adjustment of these claims you had. You do not know whether the claims were made up at the time of these conversations with Mr. Smythe in St. Louis?

A. I do not remember.

Q. You do not remember as to that?

A. No sir.

Q. At the time that you had this conversation with Mr. Smythe, do you remember what the rate then in force was between Kansas City and Texarkana and southern points—Texas points?

A. I know what we were supposed to be getting.

Q. What I mean is, do you know what the published tariff rate was at that time?

A. I don't know that I do.

Q. You don't know that do you?

A. No sir. I paid no attention to it. It was left entirely to Mr. Fisher and Mr. Catlin to look after.

Q. Now in these conversations that you had with Mr. Smythe, either at the Planter House or at Faust's, did not Mr. Smythe say to you, when you asked him something about protecting these cars, that were in transit—didn't he say that personally he would be glad if it could be arranged, but he had no authority?

A. No sir.

Q. You were also urging Mr. Smythe to protect you, weren't you?

A. I never had any more than just spoken to Mr. Smythe.

Q. Well, at this conversation at Faust's at supper?

A. Never had any conversation with Mr. Smythe in reference to this matter.

Q. He was present, however, at this time at Faust's?

A. Yes sir, at Faust's at supper or dinner.

98 Q. What, exactly, was said between you and Mr. Smythe at Faust's? Give us the conversation as nearly as you can recall it?

A. I asked him the same as I had at the Planters, to be sure of it, if he was going to protect us on that grain. And he said he would on all the cars in Kansas City and between Kansas City and Council Bluffs.

Q. Is that as fully as you recall that conversation, Mr. Forrester?

A. And that he would do more if he could—something like that. The conversation was very short.

Q. Did he say in that conversation there that personally he would be glad to have the matter arranged, but that he had no authority?

A. No sir.

Q. You have given the conversation as fully as you can recall it now?

A. Yes sir.

Q. Prior to making these shipments from these northern points over the northern connecting lines, destined to southern and Texas points, you, personally, had had no talk with any representative of the Kansas City Southern Railway Company, about the rates?

A. Myself?

Q. Yes.

A. No sir. Mr. Fisher and Mr. Catlin had charge of that.

Redirect examination by Mr. PAUL F. COSTE:

Q. That second time that you asked Mr. Smythe in regard to this matter, was while you were having supper there, you four gentlemen?

A. Yes sir.

Q. And the conversation at that supper was mostly of a social nature?

A. Yes sir; pretty much altogether, until right at the finish, when I asked him.

Q. To be re-assured, you asked this thing over again?

99 A. Yes sir, and he assured me they would protect us on what cars we had in Kansas City, and between there and the Bluffs, and would do more if he could.

ROBERT L. FORRESTER.

Subscribed and sworn to before me on this 7th day of June, 1902, between the hours, at the place in that behalf first aforesaid.

HENRY J. OBERSCHELP,

[SEAL.]

Notary Public.

My — expires November 4, 1902.

It was agreed by and between counsel for the plaintiff and Mr. Cyrus Crane, appearing as counsel for the garnishee, that the foregoing depositions should be taken in shorthand and afterwards transcribed upon the typewriter, read over and signed by the witnesses respectively, all objections on that account being hereby waived.

Filed Jun- 18, 1902.

FRANK O'REILLY,

Clerk Dist. Court.

Opened June 24, 1902, by request of J. M. Wayde, Att'y for Pl'ff.

FRANK O'REILLY, *Clerk.*

100 Plaintiff now offers in evidence paper marked Ex. A, in words and figures following, to-wit:

In the District Court of Crawford County and State of Kansas,
Sitting at Pittsburg.

THE C. H. ALBERS COMMISSION COMPANY (a Corporation), Plaintiff,
vs.

ROBERT L. FORRESTER and JOSEPH M. FORRESTER, Defendants;
The Kansas City Southern Railway Company (a Corporation),
Garnishee.

Stipulation.

It is hereby agreed and stipulated by and between the above named plaintiff and the above named Garnishee, the Kansas City Southern Railway Company, that the oral testimony of C. V. Fisher, E. F. Catlin and J. E. Rahm, and also any other witnesses who testified on either side in the cause next mentioned herein, together with all the exhibits by them identified and referred to and introduced in evidence on the trial of the case of the Field & Slaughter Company, vs. The Kansas City Southern Railway Company as Garnishee, at the March term of said court, 1903, and reduced to shorthand writing by the stenographer of said court at the time of said trial, may be used and read in evidence by the stenographer of said court, either from his shorthand notes of said trial or from his own transcript of said notes, at any subsequent trial or trials which may be had in said case, and also at the trial or trials which may be had in the case of the C. H. Albers Commission Company vs. The Kansas City Southern Railway Company as Garnishee, now pending in said court, and also in the case, The Kaw Grain & Elevator Company vs. The Kansas City Southern Railway Company as garnishee, now pending in said court, and also in the case of F. M. Slagle & Company vs. said Railway Company as Garnishee, now pending
101 in said court, and also the case of Herman Oerlichs & Company vs. said Railway Company as Garnishee, now pending in said court, by either of the parties to any of said cases with the same force and effect as though the witnesses aforesaid, were present in person at each of such trials and duly sworn in each of said cases at the trial thereof and repeated such testimony upon oath in the presence of the court and the jury; the parties to said causes reserving to themselves the right to object and except to any questions and answers contained in said testimony the same as though each of said witnesses were present and testifying in person, and either party shall have the right to move to strike out any answer or answers or portions of said testimony the same as though each of said witnesses were present and testifying in person in the trials of each of said cases, but all objections and exceptions as to matters of form on the introduction of said evidence from said notes or transcript in the place of the witnesses being present and testifying in person are hereby expressly waived.

And it is hereby agreed that this stipulation shall not preclude either of the parties of any of these suits from the right to have present at any of the trials referred to herein or to be had, any of

said witnesses and to have any of said witnesses testify in person in case either party to any of said suits so desire, and that this stipulation shall not be construed to prevent either of the parties to any of said actions from taking and using the depositions of any of said witnesses in any of said cases.

Signed this 24 day of October, A. D. 1903.

W. J. WATSON,

CYRUS CRANE,

*Attorneys for the Kansas City
Southern Railway Company.*

PAUL F. COSTE,

J. M. WAYDE,

Attorneys for Plaintiff.

Ex. A. E. C. J.

102 Plaintiff now offers to read the testimony of J. E. Rahm from the transcript prepared by the official stenographer of this court.

Garnishee admits it is a proper transcript and was prepared by the official stenographer.

Said transcript is as follows:

J. E. RAHM, called as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. COSTE:

Q. State your full name?

A. J. E. Rahm.

Q. Where do you live and what is your business?

A. I live in Kansas City, and I am in the grain business.

Q. With whom are you now employed and were you employed in the year 1901?

A. The Kaw Grain & Elevator Company.

Q. In what capacity were you engaged,—what were your duties in 1901 and the early part of 1902?

A. I was in charge of the office.

Q. You have been in court here today and heard these Forrester Bros. shipments mentioned in the testimony. Do you know anything about these shipments that are referred to here that were made along in September, October and the following months in 1901?

A. Why the Kaw Grain & Elevator Company handled them in Kansas City for Forrester Brothers.

Q. Did you have anything to do with them in your capacity as an employe of the Kaw Grain & Elevator Company?

A. Yes, sir, they were handled through our office.

Q. What did your firm do with them, if you have personal knowledge, with reference to these shipments?

A. We received them in Kansas City and forwarded them to Texarkana.

Q. They came into Kansas City and then they were reshipped from there?

A. Yes sir.

103 Q. And your firm looked after them for Forrester Bros.?

A. Yes sir.

Q. Over what road were they reshipped from Kansas City?

A. Over the Kansas City Southern.

Q. To what destination?

A. Texarkana and Shreveport.

Q. State whether or not in making these shipments over the Kansas City Southern you had anything to do with paying the expense bills for such shipments?

A. We paid all the freight on shipments.

Q. Did you have anything personally to do with that payment of these bills?

A. I authorized the payment of them.

Q. Were all bills presented to you at the office of the Kaw Grain & Elevator Company?

A. Yes sir.

Q. I show you this bunch of papers here and will ask you if you have ever seen these before?

A. I have seen these papers before. Yes sir, the biggest part of them.

Q. In what connection—in connection with the Forrester shipments you were looking after?

A. These are the bills of freight paid on the Forrester Bros. shipments.

Q. They were brought in to you by whom?

A. By the Kansas City Southern Railway or a collector, and they were paid to Texarkana or refunded by us to the parties who paid them.

Q. All of these bills except those you have stated that were paid at Texarkana, were bills paid by you or to your knowledge, in the office of the Kaw Grain & Elevator Company?

A. Yes sir.

Q. For Forrester Bros.?

A. Yes sir.

Q. To a collector of the Kansas City Southern Railway Company?

A. Yes sir.

Q. This larger bunch, which I have separated and which I will ask to have numbered from one consecutively, represent those bills that were paid at Kansas City to the Collector of the Road by the Kaw Grain & Elevator Company?

A. Yes sir.

Q. And these yellow ones numbered consecutively, Series A. represent bills also of the Kansas City Southern for this freight, and which were paid at destination by consignees to whom you refunded the amount?

A. Yes sir.

Q. For Forrester Bros.?

A. Yes sir.

Q. I will ask you about the billing of these Forrester shipments,

in what manner were they originally billed, that is, when the first of them came through your hands, to your knowledge?

A. Nearly all of them were billed to Texarkana.

Q. From points above?

A. From Omaha and beyond.

Q. Well these bills you have identified were for freight charges from Kansas City down south are they not?

A. Yes sir.

Q. When did bills come in in that way, that is, for separate charges from Kansas City down? How soon after the shipment began to be made?

A. I don't quite understand the question.

Q. Were there many through shipments, through billing, and how soon did the separate billing, as shown by these expense bills, begin?

A. Why nearly all of it, practically all of it, was handled that way.

Q. There was very little, if any, through billing on any of these shipments?

A. Very little handled on the original through billing.

Q. Please state, if you know, what brought about this through billing,—that is, from above to Kansas City and from Kansas City south?

(Question withdrawn.)

Q. I will ask you what you know about that, if anything?

A. We handled all through billing.

105 Q. Now why was this change made from through billing to separate billing, if you know?

A. For convenience in handling.

Q. Just explain that briefly.

A. Cars could not be settled for readily if allowed to go on to destination because they could not be settled until their charges were settled which would take a great deal of time. If they were prepaid at Kansas City they could be settled immediately.

Q. Did you take this matter of separate billing up with the officers of either of the roads yourself?

A. No sir.

Q. That was done by some one else of your firm was it?

A. I don't think our firm had anything to do with it.

Q. Do you know whether your firm requested this done, of your own knowledge, or whose suggestion?

A. No sir I do not.

Q. Do you know anything about the arrangement that Forrester Brothers had with these roads for rates?

A. No sir, nothing whatever.

Cross-examination.

By Mr. MOORE:

Q. About when did these shipments begin from Forrester Bros. to the Kaw Grain & Elevator Company?

A. I can't tell the exact date. It was somewhere along in August or September 1901.

Q. And these cars that were shipped would be billed to shipper's order and notify your company?

A. They were billed to Forrester Bros. Texarkana, if I remember right.

Q. There were very few cars shipped on through billing?

A. Nearly all of them were billed that way but I think very few of them went through on the original bills of lading.

Q. As a matter of fact practically all of the cars of Forrester Bros. would be shipped to Kansas City and re-billed from Kansas City to Texarkana?

A. The original bills of lading read Texarkana.

Q. All of the cars that were shipped came to Kansas City, were stopped there, and then re-billed over the Kansas City Southern?

A. The bulk of them were re-billed.

Q. I suppose 99 out of every 100 were re-billed at Kansas City were they not?

A. Hardly as large a percent as that.

Q. Practically all of them?

A. The greatest bulk of them were.

Q. What I mean by re-billing at Kansas City is this: after the grain got to Kansas City and then went through your elevator or whatever you wanted to do with it, it was re-billed to Texarkana and a new bill of lading issued?

A. Yes sir.

Q. And on practically all of the shipments you have referred to was new bill of lading issued over the Kansas City Southern to Texarkana and Shreveport?

A. Yes sir.

Q. When grain was shipped from Omaha and points near Omaha to you who paid the freight?

A. We paid the freight on part of it.

Q. That is, all freight from Omaha to Kansas City you would pay?

A. On part of the shipments we paid the freight.

Q. On all the shipments re-billed from Kansas City you would pay the freight wouldn't you, from Omaha to Kansas City?

A. No sir, not necessarily.

Q. On the bulk of them?

A. Yes sir.

Q. What rate did you pay from Omaha to Kansas City?

A. The rates vary. A great many of these shipments came from points beyond Omaha so that I can not give a definite answer to that.

Q. Well when they came from Omaha and common points what rate did you pay?

107 A. Well I don't remember that.

Q. Can you give any rate that you paid?

A. I would not. I could not make that statement without reference to my books.

Q. So far as the matter of rates is concerned from Omaha to Kansas City your mind is a perfect blank?

A. It is not a perfect blank, but I could not say with any degree of certainty what was paid.

Q. At any rate you did make payments yourself or they were made under your supervision?

A. Yes sir.

Q. But you can not remember at this time a single solitary rate that you paid upon that stuff from Omaha to Kansas City?

A. No sir.

Q. As a matter of fact you are not anxious to remember that are you?

A. I can not do it or I would. I will answer you honestly.

Q. When this stuff came to Kansas City and was re-billed from Kansas City to Texarkana, would you pre-pay the freight at Kansas City for its carriage from Kansas City to Texarkana and Shreveport?

A. Yes sir.

Q. And that is what these expense bills are for?

A. Yes sir.

Q. Did you look after the payment of that freight yourself?

A. Yes sir.

Q. Now what rate did you pay to the Kansas City Southern when you prepay the freight upon the re-billing from Kansas City to Shreveport or Texarkana?

A. There are different rates. The bills will show that.

Q. Well, part of it is 10 cents isn't it? Can you tell from recollection?

A. I can not tell.

Q. Now here is a bill for car No. 1433, Omaha & St. Louis, dated Oct. 25, 1901, 10¢, was that the rate you paid from Kansas City to Texarkana?

A. I do not speak from recollection, but this bill shows 10¢, so I must have paid that.

Q. In a general way the rates stated here, whether 10¢ or 14¢ as the case may be, is the rate which you paid?

A. Yes sir.

Q. From Kansas City to Texarkana?

A. Yes sir. That is what is stated on the bill.

Q. As a matter of fact upon all of these shipments from Kansas City to Texarkana or Shreveport the rate that you paid was either 10¢ or 14¢ wasn't it?

A. It is what the bills show.

Q. Isn't that your recollection it was from 10¢ to 14¢? You have a pretty fair recollection of the rates you paid haven't you?

A. No sir. There might be some in there that are more than that; there might be some less; I cannot say exactly.

Q. About all that you can say is that the rates named in these expense bills are the rates you paid?

A. Yes sir.

Q. Now from the very beginning of these shipments the rate that

you paid from Kansas City to Texarkana was either 10¢ or 14¢ or about that?

A. Just what is shown on the bills.

Q. You understand, do you not, that there is a claim here that there was an 8 cent rate in force or an 8 cent division between Kansas City and Texarkana?

A. I have heard it said——

Q. What I am getting at is this: state what amount you paid on these expense bills from Kansas City to Texarkana, if any
109 instance, of an 8 cent rate?

A. I paid just what the bills show. I could not state as to that.

Q. Have you got any freight bills from, beginning on September 27th, on down to October 31st?

A. They are all here.

Q. All that you have paid cover this entire transaction?

A. Well I would not say as to that. I could not say. They are all there.

Q. Can you say the expense bills cover all shipments from Omaha to Kansas City beginning September 27th, 1901, down to and including October 31st 1901 are not here, any of them?

A. State that question again.

Q. Where are the expense bills covering the shipments made from Kansas City to Texarkana between the dates Sept. 27th and Oct. 31st, 1901?

A. Why all the expense bills that we had we sent to Forrester Bros.

Q. You haven't any here, between those particular dates?

A. I didn't notice the dates there.

Q. Will you kindly look at the dates. I would like to get track of the expense bills between the dates Sept. 27th, and Oct. 31st.

A. Here are some that I paid between those dates.

Q. In response to my question you have given me expense bills on car #11777, dated Oct. 8; car #1039, Oct. 5; car #11239, Oct. 12; car #3815, Oct. 15; car #7926, Oct. 8; car #2138, Oct. 22; car #1433; Oct. 23, that is right isn't it?

A. That is right.

Q. In all of these expense bills I have called your attention to the rate upon the grain shipped and covered by the expense bills, being the rate from Kansas City to Texarkana, is 10¢ rate as shown by the expense bills?

A. Yes sir.

110 Q. Isn't it true that all of these shipments which were made from Kansas City to Texarkana in the months of September and October 1901 that it took a rate on the expense bills of 10¢ from Kansas City to Texarkana?

A. That I cannot say except from the bills which you have before you.

Q. You have no reason to doubt but that there was a rate of 10¢ in force at that time?

Q. In prepaying these shipments in September and October 1901

you prepaid them from Kansas City to Texarkana at a rate of 10¢ per hundred as shown by these receipts? Q. In other words: the shipments represented by these expense bills I have just shown you, as you say, were made on a 10¢ rate; those expense bills were paid on a 10¢ rate—those you have in your hands—the other expense bills covering the shipments in the latter part of September and during the month of October were also paid by you on a 10¢ rate so far as you paid them?

A. That I can not say positively.

Q. There were others were there not?

A. That I can not say now.

Q. What is your best recollection or impression?

A. I think there were.

Q. And isn't it your best recollection, or impression, that they were pre-paid on a basis of 10¢ per hundred?

A. That I can not say.

Q. I only ask for your best recollection or impression about it? If you have any recollection tell about it.

A. The only thing I can tell about shipments at that time are those you have in your hands.

111 Q. You tell this jury you have absolutely no recollection at all of any other shipments except those covering that period which I have here in my hand?

A. No sir I have not.

Q. When you would have occasion to re-bill grain out of Kansas City to Texarkana would you go to the General Agent of the Railroad Companies in Kansas City with the expense bills which you have paid upon the shipments into Kansas City and submit that to him?

A. That is the customary way of billing out grain.

Q. What is the purpose of that?

A. That is a question I can't very well answer. It is demanded by the railroads.

Q. And this general agent examines your expense bills and then taxes the rate on upon the bill of lading?

A. The general agent takes the bill and puts the rate on the bill of lading.

Q. In other words: when you want to re-ship some of this grain to Texarkana you would take the bill of lading which you had prepared for the railroad agent to sign, covering the shipment from Kansas City to Texarkana and also take the expense bills already paid for bringing the grain into Kansas City, and take them to the general agent and he would examine the expense bills and he would also check the bill and insert the rate? That is the way you did it, isn't it?

A. Yes sir.

Q. In each and every one of these expense bills you have produced here (I don't know how many there are), you wanted to pay the freight—that is, pre-pay the freight from Kansas City to Shreveport or Texarkana you would have the general agent of the railroad companies in Kansas City check the bill and insert the rate?

A. Yes sir.

112 Q. And this rate of 10¢ or 14¢ as it may be, running through all these expense bills is the rate inserted by the general agent of the railroad companies in Kansas City at the time you paid the freights?

A. It is customary and I think that is the case here.

Q. In each and every case?

A. I think so, yes sir.

Q. Did you make any shipments at all from Kansas City to Texarkana upon an 8¢ rate?

A. That I cannot recollect.

Q. You do not recollect of ever having made a single shipment over the Southern on an 8¢ rate during the period of time we are now considering?

A. I could not say positively as to that.

Q. You said a moment ago you sent all the expense bills to Forrester Bros., why did you do that?

A. Well it was their business and we paid it for them and of course we sent them the receipts of the money expended in their interest.

Q. What connection did the Kaw Grain & Elevator Company have in these shipments? Were they the purchasers of the grain?

A. We merely handled them as their agents.

Q. Well just tell us in detail what you did.

A. The grain is handled just the same as by commission merchants. We handle them and take care of them for them.

Q. When they would make a shipment from Omaha to you would they draw a draft on you?

A. Yes sir.

Q. And you would pay the draft?

A. Yes sir.

Q. And that would enable you to get possession of the grain from the Railroad Company?

A. Yes sir.

Q. Did you sell the grain to points south, Texarkana and elsewhere?

113 A. Most of it was contracted for.

Q. Who contracted for it?

A. The bulk of it was sales made by our firm for Forrester Bros.

Q. When you sold a car to Texarkana, or some point in Texas, would you bill it to Texarkana and bill it to your order and draw a draft against it the same as Forrester Bros. had drawn a draft against you?

A. We would bill it—we would generally bill it to the parties to whom it was sold,—that had contracted for it.

Q. Would you draw a draft against the shipment?

A. No sir. The most of it was contracted for by parties in Kansas City and payment was made there.

Q. Take for instance the bill with reference to car #7926, let me ask you if that was sold by the Kaw Grain & Elevator Company to the Moore Grain & Elevator Company of Kansas City, and if you

didn't ship it to Texarkana to your own order with instructions to notify the Moore Grain & Elevator Company at that point?

A. It was shipped to them at Texarkana.

Q. Wasn't it shipped to yourself at Texarkana?

A. No sir.

Q. Isn't that a shippers order bill of lading?

A. Yes sir. But that is to Moore Grain & Elevator Company, Texarkana.

Q. That is a shippers order bill of lading?

A. Yes sir.

Q. So they could not get possession and control of the car without your permission?

A. Yes sir.

Q. And so you would retain possession and control until it was paid for by the Moore Grain & Elevator Company.

A. Yes sir.

Q. What did your company get out of this deal?

114 A. Why, a regular grain commission.

Q. What was that?

A. Why it is a half cent a bushel on corn and oats.

Q. Wasn't this a joint contract? Didn't you get any of the profits out of this contract?

A. No sir.

Q. You say as soon as these expense bills were paid you sent them to Forrester Bros. Omaha?

A. St. Louis. It is customary to send the receipts, if you can, to your customer.

Q. Did they know you were paying a 10¢ rate on this property from Kansas City to Texarkana?

A. Why the bills——

Plaintiff objects unless he knows.

Q. Did they know from the expense bills, or otherwise, the rate you were paying on pre-paid freight from Kansas City to Texarkana?

A. I have no way of telling that except when they received the bills they could see it then.

Q. Do you mean it wasn't discussed between you, or wasn't the subject of any correspondence?

A. I did not know of any discussion at all.

Q. They never mentioned to you, through any correspondence or otherwise, anything about this 10¢ rate?

A. No sir.

Q. You went on month after month paying a 10¢ rate or a 14¢ rate and sending the receipts to Forrester Bros. and they never said a word to you about it?

A. We paid them as the bills show.

Q. You paid them?

A. Yes sir.

115 Q. And paid a 10¢ or 14¢ rate and immediately bound up the bills you paid and sent them to Forrester Bros. and they never raised any objection whatever?

A. Not to us. We paid all the bills we paid as the rate shows there. There was no objection made to us.

Q. Why did you pay this 10¢ rate?

A. Well it was the bill that was brought to us to forward the stuff to Texarkana.

Q. How long have you been in the grain business?

A. Nine years.

Q. If there is anybody on the face of the earth keeps track of rates it is grain men?

A. It is according to the part of the country they are doing business in.

Q. You are doing business in Kansas City and during the nine years you have been in the grain business you have cast your eye occasionally over the matter of rates?

A. Yes sir.

Q. Have you had a number of consultations with railroad agents about the matter of rates?

A. I have gotten rates occasionally.

Q. You always endeavor to get the best rates you can, or do you?

A. I didn't have, at that time, to do that. Most of my work is doing office work.

Q. You keep pretty well posted, don't you, upon grain rates, especially where you have large shipments like these?

A. I have to know more or less about them.

Q. And during the period of these shipments you did know more or less about the rates from Kansas City to Texarkana, didn't you?

116 A. I can not recollect that I knew very much about it. I presume at that time I knew what the rate was.

Q. It is very probable that at that time you were paying these expense bills you knew what the rate was from Kansas City to Texarkana?

A. Yes sir.

Q. You haven't the slightest doubt in your own mind but what you knew what the rate was when you paid these bills?

A. I think I knew.

Q. And with that knowledge of what the rate was, I mean the open rate,—open to everybody,—you paid these expense bills, 10¢ or 14¢ rate?

Plaintiff objects as being incompetent, irrelevant and immaterial, calling for an opinion and conclusion of the witness, and assuming that there was an open rate, and not confining it to the railroad in question.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. Yes sir.

Q. And sent the bills immediately to Forrester Bros. at St. Louis?

A. Yes sir.

Q. And they never raised any objection to your paying a 10¢ rate?

A. Not to us, no sir.

Q. And you never said anything to them about the rate being excessive?

A. I don't think the rate was ever discussed.

Q. As a matter of fact, at that time, 10¢ was the open rate, wasn't it?

Plaintiff objects as assuming there was an open rate and assuming the witness knows, and incompetent, irrelevant and immaterial, and if there was a tariff rate the tariff is the best evidence.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. I judge so from the expense bills.

Plaintiff moves to strike out the answer as not responsive to question.

Motion sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

117 Q. You know what I mean by the open rate. The rate open to everybody?

Plaintiff objects: No foundation for this question.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. Yes sir.

Q. That is the rate you would have to pay, or I would have to pay for shipments from Kansas City to Texarkana?

A. Yes sir.

Q. You understand that is an interstate shipment?

A. Yes sir.

Q. And you know about those interstate commerce schedules don't you, and the rates that the railroad companies get out and post up and also file with the Interstate Commerce Commission?

A. The tariffs,—yes sir.

Q. And this 10¢ rate and 14¢ rate, at the time you paid these rates, were the open rates that were filed with the Interstate Commerce Commission, wasn't they?

Plaintiff objects: incompetent, irrelevant and immaterial, and assuming that the witness knows.

Objection sustained.

Q. Calling your attention to these expense bills you have already identified as having been in October on which the rate is 10¢, I will ask you just confidentially between you and me, the reason of sending these expense bills to Forrester Bros. Wasn't it that they might, by the use of the expense bills, obtain some concessions from the company?

A. I don't know a thing about it.

Q. Of course you don't have any personal knowledge about it, but you don't have any doubt about it do you?

Plaintiff objects: incompetent and immaterial.

Objection sustained.

118 Q. Did you personally pay these expense bills?

A. I authorized the payment.

Q. What you mean by that in a general way, you supervised it?

A. Yes sir.

Q. You didn't draw a check to pay any particular bill did you?

A. I don't suppose I wrote a check for any of it.

Q. Do you have any personal knowledge of your own that any of them were paid except what you got from the routine of your office?

A. No sir, that is all.

Q. These expense bills paid at Texarkana, of course, you have no personal knowledge whether they were paid or not?

A. Only from the receipts and we paid our money to the consignee.

Q. To that extent you are advised, but you have no personal knowledge of their being paid have you?

A. I consider they paid the bills from the receipts. I didn't see them paid.

Q. Do you know whether or not Forrester Bros. and the Railroad Company made a settlement of these shipments prior to October 31st?

A. I don't know anything about that.

Q. When you made these pre-payments of freight to the Railroad Company you didn't make any protest to them about the rate or anything of that kind, did you?

Plaintiff objects as incompetent, irrelevant and immaterial.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. Not our firm, no sir.

Q. You simply voluntarily paid the expense bills as presented to you?

A. I paid them in the usual order of business.

119 Q. And you say you checked the rate to see that it was the rate before you paid it?

A. I think so, yes sir.

Q. If the Railroad Company had overcharged you, or charged you anything more than the open rate, you would have detected it in a moment and made objection to it?

Plaintiff objects: not shown that he knew what the open rate was. Objection sustained.

Q. If the Railroad Company had made a charge in the expense bill in excess of the open tariff rate you would have noticed it and made objection, wouldn't you?

Plaintiff objects as assuming there was an open tariff rate on file, and also for the reason it is incompetent, irrelevant and immaterial, calling for an opinion and conclusion of the witness, and about matters concerning which the witness could have no personal knowledge.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. You have no doubt about it in your own mind. You were watching these things yourself, wasn't you?

Plaintiff objects for reasons last above stated.

Objection sustained and garnishee excepts, as above.

Q. You authorized the payment of these bills?

A. Yes sir.

Q. And naturally when you authorized the payment of the bills you saw the bills and knew what rate was being charged?

A. Yes sir.

Q. And if the Railroad Company was charging you over and above the open rate you would detect that at once?

Plaintiff objects for reasons stated in second above objection.

Objection sustained, and garnishee excepts, as above.

Q. You would detect it if there was an overcharge?

Plaintiff objects as calling for an *opening* and conclusion of witness.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. And as far as you know you never made any detection of an overcharge in the bills you have identified?

120 A. Not that I know of. Not that I recollect now.

Q. You said the through billing was changed on account of convenience in handling,—the change from the through billing was made only that the freight might be pre-paid here so you would have the expense bills to send to Forrester Bros. at once?

A. So the cars could be settled for readily.

Q. With whom?

A. With Forrester Bros.

Q. So you would have the expense bills showing the pre-payment of the freight and turn it over to Forrester Bros. and have immediate payment?

A. So we could settle up the cars and get it off of our books. It takes a long time to let the cars go forward with the freight following and pay the freight at Texarkana.

Redirect examination.

By Mr. COSTE:

Q. I will ask you—one of these bills here dated Nov. 18, 1901, for car 14150, from this bill it appears the rate is calculated at 10¢ and also at 8¢ below the figures 40. It is calculated at 10¢ and figures 32 it appears to be at 8¢, how do you account for that, or what does it mean?

Garnishee objects; that is one of the bills witness says he hasn't any personal knowledge about.

Objection sustained.

Q. Is this one that was paid to the agent of the Railroad Company at your office?

A. No sir, that is a Texarkana bill.

Q. You can not explain this you say?

A. I think I can.

Q. I will ask you if you can explain what these two calculations mean on these bills, from your acquaintance with these matters?

Garnishee objects to Texarkana bills.

121 Q. Very largely they were all paid by the Kaw Elevator Company, all of these bills I have called your attention to?

A. Yes sir.

Q. Did I understand you correctly about this larger bunch of bills, that these were paid in the office of the Kaw Grain & Elevator Company to the agent of the Railroad Company?

A. Yes sir.

Q. You was present when these bills were receipted wasn't you?

A. On some of them. I would not say positively of all of them.

Q. Your practice was for the railroad collector to come into your office and present these bills, get his money, and check the receipts and leave it there?

A. Yes sir.

Q. I will ask you to state whether in the matter of rates you or your firm represented Forrester Bros. at all in conferences or arrangements with the Railroads?

A. Not at all that I know of.

Q. You were not therefore, as part of your duties, bound to be on the lookout as to what rates Forrester Bros. made on these shipments?

(Question withdrawn.)

Q. I will ask you if it is your business in connection with your duties, to keep posted on what is called railroad tariffs,—what they are from time to time?

A. I keep pretty well posted on tariffs, yes sir.

Q. Were you posted on tariffs and open rates during that time as to these Forrester shipments, so as to be able to say from your own knowledge, so as to say what was the rate at any given time?

A. I judge I was at that time. I don't recollect now, but I think I undoubtedly was.

Q. You might then, but as to your present knowledge of what they were at that time or other times, you would not undertake to say?

122 A. No sir.

Q. I will ask you, are there differences usually in freight rates? For instance: from Omaha down to a point like Texarkana and the local rates which would exist between Omaha and Kansas City, and then again from Kansas City to Texarkana? In other words: would the freight rates covering that same distance vary from the two local rates?

Garnishee objects as calling for witness to determine a point of law.

Objection overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

A. It very frequently does vary and that would be true.

Q. I will ask you whether that would be so where there is a public tariff for these local rates of so much, that the freight rates could be made and is made a matter of practice for a lesser rate than the sum of the two local rates as fixed by tariffs?

A. You have given me a question that I can hardly answer.

Q. Suppose there was a rate fixed by tariff from Omaha to Kansas City, and another separate rate fixed by tariff from Kansas City to Texarkana; now would a railroad make a rate as a through rate from Omaha clear down to Texarkana for a less sum than these two existing tariff rates?

Garnishee objected, and question withdrawn.

Witness excused.

Plaintiff now offers in evidence bills identified and referred to by this witness, numbered from 1 to 305 consecutively; and also offers in evidence yellow bills, series A, identified by this witness, number A-1 to A-32 consecutively.

Mr. CRANE: To those yellow bills, A-1 to A-32, we object for the reason that it appears from the testimony of this witness that they were not paid by him, but were bills that were paid at destination by consignee, and is therefore a matter not within his personal knowledge.

Objection overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

123 Plaintiff now read in evidence the testimony of E. F. Catlin, as prepared by the official stenographer from his notes taken at the time of the trial, as follows:

E. F. CATLIN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination by Mr. COSTE:

Q. State your name and residence.

A. E. F. Catlin, St. Louis, Mo.

Q. What is your business?

A. Grain business.

Q. How long have you been in that business?

A. Since 1886.

Q. Do you know Forrester Bros.?

A. Yes sir.

Q. You have heard the testimony here today. Were you connected in any way with these grain transactions that have been testified to by Mr. Fisher and others?

A. Yes sir quite largely.

Q. What was your relation to Forrester Bros. in these matters?

A. Well my principal part of the work was to get rid of the stuff; sell the grain; find an outlet for the grain.

Q. In what way did you have any pecuniary interest in the business?

A. I had a working interest in the business.

Q. What compensation were you to get in that way?

A. We had a salary guaranteed and a certain per cent of the profits at the end of the year.

Q. And the work you did in these matters, in selling this grain was for Forrester Bros. as an employé at a salary as you say?

Garnishee objects: calling for a conclusion.

Objection sustained.

Q. You speak of a salary; did you have any other interest than that as a matter of compensation for your labor?

124 A. We had a salary guaranteed and a working interest in the profits.

Q. About what time did these transactions take place?

A. We commenced clearing our business with Forrester Bros. I think in June or July of 1901, and up until after March, I think, 1902.

Q. Was Mr. Fisher connected with Forrester Bros. in the same way as yourself as you have stated?

A. So far as compensation, yes sir.

Q. What part of these transactions did Mr. Fisher attend to and what part did you attend to?

A. Mr. Fisher represented the tariff part of the work,—all of the railroad work was done by Mr. Fisher. He put out the bids for the stuff. His office was in Omaha, Atchison and the Territory in which he was bidding. We were in consultation every day for the purpose of making our prices and making our sales; both consulted each other two or three times a day on different features of that kind.

Q. What, if anything, did you have to do with reference to making rates for these shipments?

A. Nothing whatever so far as the western business was concerned, unless it would be business that worked through our home market.

Q. Did you have any conferences at any time during this period, the latter part of 1901 and early in 1902 with the Kansas City Southern officials, if so, when?

A. Yes sir, I had several meetings. The first, I think, was when Mr. Smythe and Mr. Schaufler came to St. Louis. I got word from Mr. Fisher they were coming down regarding this freight arrangement over which there seemed to be some difficulty. I was requested to meet them at the Planters Hotel, and did so, and spent
125 possibly an hour or so with Mr. Smythe and Mr. Schaufler talking over the arrangement of Mr. Forrester before we went to dinner. We finally went to Faust's for dinner, and when we got through dinner Mr. Smythe and Mr. Schaufler took a train to Kansas City.

Q. What was said at either the Planters House or Faust's in regard to these rates and the claim for overcharges, if anything?

A. Well, we had a certain arrangement made by these parties and they had been dilly-dallying about it; the Kansas City Southern people didn't seem to know what to do; they would not say they

would not do anything,—kept leading us on,—and I made up my mind to call a halt, and I asked Mr. Smythe what he was going to do, after talking the matter over with him, and he told me in the same conversation, he said: he wasn't satisfied as to what he could do, said he was down there on that mission to see if he could work things out. He said he was out there on that matter to see if he could work things out all right, and wound up the conversation by saying he would take care of us. I said "grain is coming to Kansas City to us; it is in transit, and — day we have called on our commission house, the Kaw Grain & Elevator Company, or the day before,—possibly two or three days before,—I think I said the day before, and found out the grain we had in transit by the bills of lading we had then in the Kaw's hands.

Q. By the Kaw's hands, you mean the Kaw Grain & Elevator Co.?

A. Yes sir. I think he said it was about one hundred and eighty odd cars in that position. He told Mr. Forrester and I he would take care of it and finally repeated that in Faust's Café.

Garnishee moves to strike out "He told Mr. Forrester and I he would take care of it and finally repeated that in Faust's Café."

Also that part of the preceeding answer as follows:—"and wound up the conversation by saying he would take care of us."

126 Mr. CRANE: I move to strike out both of these expressions for the reasons they are in no way binding upon the garnishee,—no authority is shown on the part of Mr. Smythe to make any arrangement or statement of that kind, and because they are inadmissible in any way effecting the garnishee.

Motion overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. What was said in that conversation as to any rate as to being the proper basis for charges of the Kansas City Southern from Kansas City south, or the basis to which you were finally to adjust the charges?

Garnishee objects: it appears that this witness had nothing to do with the arrangement, or making of the rate on which they rely in this case; the whole thing was made by Mr. Schaufler and he was not present and knew nothing about it.

Objection overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

A. Well the matter had been up a great many times as I say, with the Kansas City Southern people, and I told Mr. Smythe that afternoon that I could show where the Missouri Pacific road were carrying grain out of Kansas City on the same basis that we claimed his people had contracted to do with us.

Q. What was that basis?

A. 8¢ proportional basis.

Q. What more did you say?

A. We went on discussing the situation that he found existed in St. Louis. He said there was one man in particular, that represented a certain line that didn't seem to act right with him. He said he had seen two or three of them I think. I know he felt hurt with

one man. I remember that distinctly. It seems there was some arrangement that existed between these people about this Texarkana territory and he was down there to see whether he could satisfy them, as we could understand it from his conversation.

Garnishee moves to strike out the words: it seems there was some arrangement that existed between these people about this Texarkana territory and he was down there to see whether he could satisfy them, as we understand it from his conversation" for the reason it is incompetent, irrelevant and immaterial, and a mere conclusion of the witness and not a statement of any fact, but simply his understanding.

127 Motion sustained by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. Who were these people? Did he explain who they were?

A. He didn't give any names.

Q. Were they representatives of other roads?

A. Yes sir.

Q. Leading roads?

Garnishee objects: has no bearing on this controversy and is incompetent and immaterial.

Objection sustained by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. Go on, whatever else was said?

A. About everything was covered. There was one other thing happened and that is regarding cars. Mr. Schaufler in talking with Mr. Smythe,—I don't know who made the suggestion, but one said what they supposed they could do with the Wabash,—wanting to have the Wabash have their cars run on through to Texarkana and they talked about five minutes or ten and it resulted in Mr. Smythe suggesting, I think, to Mr. Schaufler he would wire Mr. Fisher to ask Endicott if he could consent to let his cars run through, or wire Endicott direct, I don't know which.

Q. Was there anything said in that connection about the fact that the Kansas City Southern had been collecting for any expense bills at more than 8¢?

A. The question being at that time on the grain that had been shipped and on the grain in transit, the question was whether the difference of rate collected and 8¢ was to be paid back to shippers. I don't remember just how that came up.

Q. When this word "protect" was used, what did Mr. Smythe explain he meant by that? He would protect all the cars then
128 at Kansas City, or what had been shipped, or was then in transit?

A. He said he would protect the rates we claimed on this grain.

Q. My question was, did he say anything further to indicate just what he meant?

A. We were talking about the 8¢ rate.

Q. He said he would protect that 8¢ rate of this tariff?

Garnishee objects as leading and suggestive.

Objection sustained by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. Were you present at Kansas City at any time, either before or after this conference at St. Louis and this meeting at Faust's, and the Planters, with the Kansas City Southern road when there was another discussion about this matter?

A. Yes sir, I went down. I wrote Mr. Fisher, or he wrote me, I don't know which now, that in as much as they had come to St. Louis,——

Garnishee objects:

Q. State when the meeting took place and who was present and what was said.

A. He had a meeting at Kansas City at the Kansas City Southern office,—Mr. Smythe's office.

Q. When was it after this meeting?

A. It was two or three days afterwards; right a short while afterwards. I was pushing the claim to get it out of the way. I wanted to know where we stood on it.

Q. Who was there?

A. Mr. Fisher, Mr. Schaufler, Mr. Moore of the Kansas City Northern connections, Mr. Smythe and myself. We were first in conference and Mr. Hanley joined us before we got through.

Q. What was discussed? Who brought up this matter?

A. Well we talked to Mr. Smythe about the matter and he seemed to have shown quite a different disposition than he did a few days before in St. Louis.

129 Q. State what he said, or anybody said, in that meeting?

A. Mr. Smythe said that the matter had been taken out of his hands. He said that the matter was now in the hands of Mr. Hanley. And Mr. Hanley, I think, at the moment was busy, but in a little while we had him join us and we all discussed the matter more. Mr. Hanley said——

Q. What did Mr. Hanley say?

A. Well Mr. Hanley disclaimed any knowledge of any such contract and said it would be impossible,—that absolutely he would not carry it out. He said it would cost the road \$100,000.00 and that absolutely he would not carry it out. Well, we told him that we expected to hold him to the contract and Mr. Schaufler represented us pretty strong in the matter and told Mr. Hanley, as he had told us. There seemed to be a very great difference of opinion between Mr. Hanley and Mr. Schaufler, notwithstanding the fact that Mr. Smythe had practically admitted on such stuff as had been shipped. I told Mr. Hanley we had contracted the grain and we had sold the grain, lots of it, but not all of it—the large proportion of it, and that the grain was largely in transit,—some shipped, some in Kansas City,—and we were going to hold them to the contract. Well, he said it was no use to discuss it. They disclaimed any contract, that is, he would not have anything to do with it. So I told Mr. Hanley we would see about that; we would take steps to protect our interest, and further-more we would dispose of such grain as had not been

shipped as far as we could, and hold them for damages on it. Mr. Moore said: well, now about this grain that is shipped, Mr. 130 Smythe says he is going to take care of that grain. He said "that is in Mr. Smythe's hands but I am sure he will do nothing to have his tail feathers pulled out" and that about wound up the conversation.

Q. At that time you had grain contracted for sale that had not been shipped at all hadn't you?

Garnishee objected, and question withdrawn.

Q. I will ask you if you ever saw these bills, and what they are, and how they came into your possession?

Garnishee objects for the reason that the bills fail to show on their face that they were shipments billed on Northern Connecting lines for Texarkana, and that the bills themselves are the best evidence of the contents.

Objection sustained by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. These are the same nature are they not? Being the same bills shown to Mr. Rahm.

A. I think they are in the same condition as far as we are concerned. They might have been paid by different parties but finally came to us through the same channel.

Q. Both lots I have shown you represent freight payments made on these same grain shipments by Forrester Bros.?

A. Yes sir.

Q. I will ask you if you made a calculation of the sum total of these bills, and how much this claim as represented by these payments of expense bills aggregate?

A. Do you mean the total overcharge?

Q. Yes sir.

A. My figures show it to be \$10,703.24.

Q. And that amount I will ask you whether it represents the total of these separate sheets of claims that Mr. Fisher was asked 131 about and likewise the total of these expense bills that have been shown you?

A. It is my recapitulation of the entire work.

Cross-examination by Mr. MOORE:

Q. You have been in the grain business for a number of years?

A. Yes sir.

Q. Have you made something of a study of freight rates?

A. Naturally would, yes sir.

Q. As a matter of fact that is a very vital part of you grain men's business to study rates?

A. It is not as much so today as it has been.

Q. A couple of years ago it was?

A. Quite an interesting part of the work, yes sir.

Q. Can you explain to the jury what the open rate is?

Plaintiff objects as assuming that the witness knows what the open

rate is, and incompetent, irrelevant and immaterial, and not part of the cross examination, and assuming that there was an open rate.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. What is your definition of the open rate?

Garnishee objects as incompetent, irrelevant and immaterial, witness has not shown himself qualified to answer; not cross examination, nothing having been asked witness about open rate.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. Where do you find the tariff rates?

A. All that we have found I get from the railroad agents.

Q. The railroad agents are supposed to be supplied with them, and are supplied, are they not?

Plaintiff objects as incompetent, irrelevant and immaterial.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. Yes sir I have always found them so.

132 Plaintiff moves to strike out all after the words "yes sir" for the reason that it is not responsive to the question.

Motion sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. And when you ask them for a rate they are very apt to show you the tariff, or tell you what it is?

Plaintiff objects: incompetent, irrelevant and immaterial, and simply calling for an opinion and conclusion.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. The tariff rate is the open rate?

Plaintiff objects for the reason it is not a question at all, but simply a statement, and further, it is incompetent, irrelevant and immaterial and the witness has not shown himself qualified to answer the question.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. Where several railroad companies unite in making a tariff it is called a joint tariff, isn't it?

A. Several connecting lines, yes sir.

Q. The joint tariff will give the open rate, the tariff rate, from one point to the other?

A. Not necessarily so. Sometimes less than the locals.

Q. What I understand, wherever you find the joint tariff covering the transit over the lines of several connecting roads that that tariff rate will be the open rate for the shipment over these particular lines?

Plaintiff objects: incompetent, irrelevant and immaterial, and calling for the understanding of counsel.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. Do you understand about the filing of these rates with the Interstate Commerce Commission?

A. I think I have a pretty good knowledge of it.

Q. You are familiar with the Interstate Commerce Law
133 that requires the filing of these tariffs with the Interstate Commerce Commission?

Plaintiff objects: not the best evidence.

Q. Now then, I will ask you if during this time in 1901 if you kept yourself posted upon tariff rates and upon rates between Kansas City and southern points such as Texarkana?

A. No sir, personally I paid very little attention to the rates in that territory. About the only attention I paid to that was simply Mr. Fisher's report to me.

Q. When these expense bills were paid from Kansas City to Texarkana by the Kaw people were they sent to you?

A. They were sent to our office.

Q. Was there any man there to check the rate and see whether the rate in the expense bills which had been paid was the open rate, tariff rate?

A. No sir.

Q. Who was supposed to do that?

Plaintiff objects: incompetent, irrelevant, immaterial, and assuming there was some one who was supposed to do that, or that it was the duty of anybody to do that.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. I had a young man supposed to do it but he did it very poorly.

Q. You had a young man whose special duty it was to examine the rate and see if it was the tariff rate?

A. I don't consider we had.

Q. You said there was a man who undertook to do it?

Plaintiff objects. (Question not answered.)

Q. Well you had a man as I understood you a while ago?

Plaintiff objects. (Question not answered.)

Q. Was there a tariff rate at that time?

Plaintiff objects. (Question not answered.)

134 Q. Do you know whether or not there was in September, October, November and December 1901 a tariff rate covering shipments from Kansas City to Texarkana and Shreveport?

Plaintiff objects. (Question not answered.)

Q. Do you know whether or not there was a tariff rate in force?

A. I don't know.

Q. An open rate?

A. I don't know sir.

Q. You have no doubt about it have you?

Plaintiff objects. (Question not answered.)

Q. You say you do not know whether there was any tariff rate in force during those months between Kansas City and Texarkana over the Southern road?

A. I don't know about the tariffs. I think the rate was all cut to pieces. I think every road had its own rate.

Q. Do you know whether or not there was a tariff rate?

A. I don't know. I have answered that three times.

Q. You do not know?

A. No sir.

Q. Now you had, I believe you said, a working interest with Forrester Bros.?

A. Yes sir.

Q. According to that interest you were to share in the profits?

A. Yes sir.

Q. And in addition to that you were to receive a guaranteed salary?

A. Yes sir.

Q. Now in connection with the profits you were also to share in the losses, if there were any, in these joint deals?

A. I presume that depended entirely on whether the profits exceeded the losses. I had no money to pay them with.

135 Q. So far as sharing is concerned, you were to share in the profits and losses both?

Plaintiff objects: (Not answered.)

Q. You were on the same basis as Mr. Fisher?

A. Yes sir.

Q. You heard him state what that basis was?

A. Yes sir.

Q. And that is about correct?

A. Yes sir it was sir.

Q. And you also heard Mr. Fisher say that this claim now being presented here if it should be paid there would be a very considerable profit in that transaction?

A. I don't think he used the words "very considerable."

Q. Well, a profit?

A. Yes sir. That is not the case so far as this contract is concerned.

Q. Now you say you had nothing to do with the rates. Your duty was to dispose of the stuff?

A. Practically nothing to do with the rates in Mr. Fishers' territory.

Q. So you have no personal knowledge with reference to arrangements made with reference to rates by Mr. Schaufler or by Mr. Fisher, you have no personal knowledge?

A. No sir. I ought to take that back I presume. I heard Mr. Schaufler, as concerning this Texarkana business in our conference, I heard him—

Q. You have no personal knowledge derived from the Kansas City Southern or any of its agents or officers?

A. So far as the railroad is concerned, yes sir.

Q. What month was it in?

A. In December.

Q. Then you were endeavoring to reach some conclusion with Mr. Smythe but didn't reach any satisfactory result?

A. We seem- to have reached a satisfactory result, but it happened to be very different. We had his word he would take care of
136 us and protect us on that rate.

Q. After that you went to Kansas City?

A. Yes sir.

Q. And there had a conference with Mr. Hanley?

A. Yes sir.

Q. And Mr. Hanley said there wasn't such a contract as you claimed?

A. Yes sir, and we were very much surprised. We didn't go there with the idea of having any further talk.

Q. His claim was there wasn't any such contract for an 8¢ rate?

A. That is his claim, yes sir.

Q. You stated at the time the discussion was going on in St. Louis you informed them the Missouri Pacific was carrying grain at 8¢ per hundred?

A. Yes sir.

Q. That is a secret cut rate?

A. I don't know.

Q. You know that the Missouri Pacific wasn't carrying grain at 8¢ on an open rate?

A. I said I thought every road had its own rate.

Q. (Question repeated.)

A. I don't know what the open rate was.

Q. You understood the Missouri Pacific was making a secret or cut rate?

A. I don't know. To that extent it wasn't a secret.

Q. You understood, didn't you Mr. Catlin, that when you gave them the information that the Missouri Pacific was making an 8¢ rate that was a secret rate and not the open rate?

A. I did not.

Q. Did you understand that the 8¢ rate was the open tariff rate?

A. I had no question about it. These people had made this rate and they would not carry it out when I knew the other people were doing it, whether tariff or what it was. I wanted to know why
137 these people would not carry out a contract when I knew other people were giving the same rate. I didn't know whether it was the tariff or open rate or what it was.

Q. Why did you tell Mr. Smythe the Missouri Pacific was carrying grain on an 8¢ rate unless it was a secret rate?

A. He said he was here in St. Louis trying to carry out the contract.

Q. Mr. Smythe is a railroad man and has tariffs all over the country?

A. Yes sir I think so.

Q. If he was a railroad man he knew all the rates of the Missouri Pacific and knew what they were doing?

Plaintiff objects: incompetent, irrelevant, immaterial, and calling for the opinion of somebody else.

Objection sustained by the court.

To which ruling of the court garnishee at the time duly excepted and excepts.

Q. Do you know at what rate this stuff actually moved from Kansas City to Texarkana?

A. I know what rate was agreed on, yes sir.

Q. Do you know at what rate it actually moved on, and upon what rate the freights were prepaid at Kansas City?

A. When you speak of moving on, do you mean from Kansas City to Texarkana?

Q. Yes sir, from Kansas City to Texarkana?

A. It was moved according to these freight bills but it was agreed on a different basis.

Q. You say it was moved according to the freight bills. At what rate was it moved according to the freight bills from Kansas City south?

Plaintiff objects: freight bills are the best evidence.

Objection sustained.

Q. Will you refer to the freight bills—if the gentlemen want to prolong the matter?

138 A. I know them pretty nearly by heart. These freight bills show the grain was moved at 8¢,—it seems they have moved some at 8¢.

Q. Point out the expense bills upon which this particular grain in controversy shows that grain was moved from Kansas City to Texarkana at 8¢.

A. Here is one. Texarkana to Fort Smith. We paid them all through the same channel.

Q. Do you know whether this was paid yourself?

A. Yes sir.

Q. You are on oath. Do you have personal knowledge that was paid at Texarkana?

A. In the way that it was I do.

Q. Do you have personal knowledge it was paid in Texarkana?

A. I did not see it paid?

Q. (Question repeated.)

A. No sir.

Q. All you know about it is what somebody else has told you?

A. What the bills show for itself.

Q. What does that in there, rate 10¢, what does that mean?

A. It means that the freight was,—that a second settlement was made on the freight at 10¢. There was one settlement made and then a second settlement comes in at 10¢.

Q. If the freight bill was paid it was paid at the rate of 10¢ wasn't it?

A. On second payment.

Q. Do you know whether that was paid twice or once?

A. I know by ordinary business methods is all.

Q. So far as this particular freight bill is concerned are you willing to tell the jury upon oath that of your own personal knowledge there were two settlements made of freight?

A. Only so far as business methods are concerned. That indicates that the settlement, if there was one, was made on a 10¢ basis.

139 Q. Now then find me one where the freight paid from Kansas City to Texarkana was 8¢?

A. Do you mean paid in Kansas City?

A. I mean find any expense bill where the freight paid on a car load of grain from Kansas City to Texarkana was 8 cents per hundred. I say, find among these bills here,—the only bills we know anything about,—where the rate paid was 8 cents?

A. I don't think there is one here.

Q. As a matter of fact they are all from 10 cents to 14 cents?

A. Some of them is combination 8 cents and the rest 10 cents. The bill shows for itself

Plaintiff moves to strike out the answer for the reason the bills are the best evidence, and witness has no personal knowledge about the matter.

Motion sustained by the court.

To which ruling of the court garnishee at the time duly excepted and excepts.

Q. The amount paid is either 10 cents or 14 cents on each and every one of them. These bills indicate, don't they, that the amount paid in each and every instance was either 10 cents or 14 cents?

A. Between settlements yes. I think however some of those bills run as high as 14½ cents.

Q. That is on wheat isn't it?

A. I don't think there was anything but corn and oats.

Q. If these cars moves at 10 cents and you, through your agents, paid 10 cents, why was hat?

A. Well our agents in Kansas City paid practically any freights presented to them. We have over-charges.

Q. Can you tell why it was your agents in Kansas City paid 10 cents and 14 cents on these shipments?

140 Plaintiff objects (No answer.)

Q. Were these freight bills sent to you?

A. I am positive they were.

Q. And you could see upon each of them the amount that had been paid?

A. I rather doubt I personally saw the bills. I could have seen them.

Q. You saw some of them undoubtedly?

A. I rather think so. Possibly all of them.

Q. And they were sent to you promptly as soon as they were paid?

A. I could not answer that.

Q. Those were your instructions; it was the duty of the Kaw Valley Company to send them to you at once?

A. As soon as they were through with the bills.

Q. As soon as they were through and the stuff shipped south they were sent to you?

A. Yes sir.

Q. Did you take up at any time with the Kaw Grain & Elevator Company the question of the rate they were paying?

A. I should think we did.

Q. At the time these freights were being paid by the Kaw people—while the freights were being paid—did you give them any instructions not to pay 10 cents or 14 cents?

A. Yes sir.

Q. Was that by letter?

A. We heard about that rate——

Q. At what time?

A. I think it was possibly commencing along about the first of December, I would not say positively to that.

Q. Did you hear the agent of the Kaw Valley Elevator Company on the stand this afternoon?

A. Yes sir I did.

141 Q. Did you not hear him say there never was any protest from Forrester Bros. or any body connected with Forrester Bros. on account of the payment of these freights?

A. So far as he knew, he said. I did sir.

Q. You say his statement is not correct?

A. So far as he is concerned it may be correct.

Q. Can you produce a single letter you have written to the Kaw Elevator Company protesting against the freight that had been paid?

A. I can produce a man. I don't know about letters.

Q. Have you got a single letter?

A. I have a few copies of letters.

Q. Have you got them?

A. No sir.

Q. To whom were these letters addressed?

A. It is possible they might have been addressed to Mr. McKinzie personally.

Q. This young man on the stand had charge of the payment of freights?

A. He had charge of their business.

Q. And he paid the freights?

A. He might have referred them to people. I don't know anything about that. I presume he had the payment of freights.

Q. He had charge of the very matter of paying these very freight bills you hold in your hand?

A. I think so.

Q. You do not undertake to say his testimony is not correct when he said no one connected with Forrester Bros. had ever said anything about the payment of these freights?

A. I made the statement as strong as I can make it, and I can produce the man.

Q. Do you say his statement is not correct?

142 A. So far as our connection with the Kaw Elevator Company is concerned it is not correct; so far as he is personally concerned I do not doubt but what it is.

Q. Are you interested in the result of this suit?

A. I am interested in the justness of any proposition that has got my name.

Q. You are interested in the result of this suit?

A. I think so, yes sir.

Q. The same is true of Mr. Fisher?

A. Yes sir.

Q. When I say interested, I mean, interested in a pecuniary way?

A. We won't get a cent out of it sir.

Q. Are you interested in a pecuniary way?

A. How can we be?

Q. Are you interested in a pecuniary way? in other words: If Forrester Bros. were suing here would you be interested if you won the suit?

A. Well I have my interest in the suit so far as this business is concerned.

Q. And so you are still retaining your interest in the Forrester Bros. business, and if Forrester Bros. were bringing this suit themselves against the railway company, you would be interested in the result pecuniarily?

A. I naturally would be.

Q. The same would be true of Mr. Fisher?

A. I think so.

Q. Do you know anything about this cut rate on the Northern lines?

Plaintiff objects: assuming there was a cut rate, and that the witness knows there was a cut rate, and it is incompetent, irrelevant and immaterial.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

143 Q. Did you hear it from any one connected with Forrester Bros.?

Plaintiff objects for same reasons as above.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. You heard Mr. Fisher say what rate he obtained from the Northern lines here on the stand?

A. I heard him, yes sir.

Q. Were you getting a rate of $4\frac{1}{2}$ cents when the open rate was $6\frac{1}{2}$ ¢?

Plaintiff objects: incompetent, irrelevant, immaterial, and witness has not shown that he knows or that he is qualified to answer the question, and assuming that the rate was $6\frac{1}{2}$ cents, or that he has any personal knowledge.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. When did you first learn that?

A. Learn what?

Q. Of the fact that he had arranged with the Northern lines for a rate of $4\frac{1}{2}$ cents when the regular rate was $6\frac{1}{2}$ cents?

(Not answered.)

Q. When did you learn the stuff moved on a $4\frac{1}{2}$ cent rate on Northern Lines?

(Not answered.)

Q. Did you ever learn that?

A. I have no personal knowledge of these rates.

Q. Did you ever hear from Mr. Fisher or from Forrester Bros. or either of them, that this stuff moved on the Northern lines, or was to move on the Northern lines at $4\frac{1}{2}$ cent rate?

Plaintiff objects: incompetent, irrelevant, immaterial, calling for hearsay testimony and for the conclusion and opinion of witness.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. I was told by Mr. Fisher about the rate.

Q. When was that?

A. I don't know that I can tell the date. I think though about the middle of September 1901.

144 Q. Did he tell you the rate was $4\frac{1}{2}$ cents on the Northern lines from Omaha to Kansas City?

Plaintiff objects: incompetent, irrelevant, immaterial, as to what conversation this man may have had with Mr. Fisher, it could not be binding upon Forrester Bros. and further, it is not proper cross examination.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. Did he tell you what the regular rate was between Omaha and Kansas City?

Objected to. (No answer.)

Q. Now did you have anything to do with the bringing of these suits here?

A. In what way do you mean?

Q. You understand, I think what I mean by bringing the suits.

A. I would not ask you if I understood clearly your question.

Q. Did you have anything to do with the Answer and appearance of Forrester Bros.—sending an answer admitting everything, and letting judgment go against them?

Objected to. (No answer.)

Redirect examination, by Mr. COSTE:

Q. When you answered in regard to having an interest in the outcome of this suit, I wish you would explain what you mean by that interest.

A. Well it is unfinished business of Forrester Bros. and connected with the business as I was I naturally got a working interest in it until the matter is settled one way or the other.

Q. Do you mean this leaves money paid out by Forrester Bros. which, if it is recovered, would effect your interest in part of the profits as you stated?

Garnishee objects. (Not answered.)

145 Q. I will ask you this: When you said you had a fixed salary interest and also a working interest or interest in the profits, whether the arrangement was that you were to have an interest in the profits, if there were any; otherwise, nothing but a salary?

Garnishee objects. (Not answered.)

Q. State what the contract was with reference to any losses, if there had been any profits and losses would you have had to pay your share of these losses?

Garnishee objects. (Not answered.)

Q. What was the agreement with reference to losses in such a case with the other parties, that is, Forrester Bros.?

Garnishee objects; assuming there was an agreement.

COURT: Let him state what the contract was.

Q. Was it a written contract?

A. No sir. I never had but one written contract and I never want another one. The exact arrangement Mr. Fisher and I had with Forrester Bros. was, we were guaranteed a salary and a certain per cent of the profits. The question of losses wasn't discussed at all. No mention made of it.

Recross-examination, by Mr. MOORE:

Q. Do you remember when your deposition was taken in this case?

A. Yes sir.

Q. Do you remember that you were asked this question as to your connection with Forrester Bros. so far as a compensation basis was concerned: "Did you have an arrangement by which you were to share in the profits and losses both?" "A. Yes sir." "When I say we participated in the net results, that means, losses and profits, settled up net." Did you give that testimony?

146 A. That is the exact contract, but there is nothing said there of losses. Mr. Coste asked me if there were no profits after these losses.

Q. Then the arrangement was stated correctly in that question and answer I read to you?

A. It is, yet it is not quite broad enough I don't think. It is correct as far as it goes.

Q. And you reaffirm it so far as it goes?

A. Yes sir, that is my decision on the subject. That is my idea of it.

Redirect examination, by Mr. COSTE:

Q. I understood you yesterday that you had told all of the interviews you had with any of the officers of the Kansas City Southern Railway Company, is that correct, or were there any other interviews than those you testified to yesterday?

A. I think I overlooked the last meeting I had in Kansas City after the grain that was actually shipped to Texarkana and bills put in for overcharges. I made one final demand then and Mr. Hanley and Mr. Smythe and I met together I think.

Q. Was that after all of these shipments had been completed for which these expense bills were produced?

A. Yes sir.

Q. About what time was that?

A. I think it was along about the first of March.

Q. Who was there, where was it, and what occurred?

A. The meeting was at Mr. Hanley's office, I think, of the Kansas City Southern. And those present were Mr. Hanley, Mr.
147 Smythe, Mr. Fisher and myself. We discussed the bills which were then in Mr. Smythe's hands and which were in appearance at that meeting.

Q. You mean that they were before you?

A. They were there on the desk before us.

Q. These same expense bills you had yesterday?

A. My opinion the same papers but not the total.

Q. Now what was said about them?

A. We discussed the matter again quite fully with Mr. Hanley and Mr. Smythe and the result of that conference was——

Q. Don't say the result was so and so. What occurred. What was said?

A. Well Mr. Hanley said that they did owe Forrester Bros. some overcharges and that they had agreed to carry some grain but he limited his remark to a few cars.

Q. Overcharges on what bills did he say? These that were before you?

A. Yes sir.

Q. Well, was anything further said, or was that the end of it?

A. Only that he said the Kansas City Southern owed Forrester Bros. for a few bills. I discussed with him what he meant by a few, and my understanding is,—my recollection is,—that he said about thirty cars. They had looked over the papers and found that there were some bills that Forrester Bros. were entitled to this overcharge. I simply said to him there if that is your idea of a settlement of this claim we will not entertain it at all. We took steps that we deemed advisable to collect what they owed us and that, I think, was the final conversation I had with any of the railroad men regarding this claim.

Garnishee moves to strike out all of the conversation as being a mere offer of compromise.

148 COURT: Whatever was said in the way of an admission is admissible, but anything in the nature of a compromise is incompetent.

Garnishee moves to strike out all of the last answer for the following reasons:—

First. It is manifestly evidence from the testimony it was merely an attempt to compromise and adjust any differences between the parties.

Second. There is no authority shown in the party who was speaking for the Kansas City Southern to bind the road by any admissions that he might make in regard to it, and no testimony has been offered establishing or tending to establish any such authority.

Third. It is not shown that the men they were talking with was the man or men with whom Mr. Schaufler claims to have made the original contract.

COURT: As to the whole answer I could not sustain the motion because I think there are some statements of fact there. Of course, any proposition to compromise is not competent.

Garnishee excepts to the ruling of the court.

Recross-examination, by Mr. MOORE:

Q. What he admitted, as I understand you, was that on certain cars shipped prior to Oct. 31, they had charged you more than 8 cents?

A. I don't remember that the question of the date at that meeting was argued. It might have been.

Q. Well that is what you were claiming that the charge was over 8 cents from Kansas City South?

A. Yes sir. Our claim speaks for itself.

Q. And anything that he might have said about it would be on a basis that they had charged you more than 8 cents, that is what you were talking about?

A. Certainly.

Q. Mr. Catlin, did you, representing Forrester Bros. and yourself and Fisher, receive back from the Kansas City Southern any money on shipments from the time this thing was entered into up until Oct. 31?

A. We received no money as far as I know.

Q. Well, do you know whether you did or not?

149 A. Forrester Bros. received no money.

Q. Well who did receive it?

A. Well there was no money received in connection with this claim.

Q. Why do you limit it to "in connection with this claim." I am putting *in* on cars shipped between the time this thing began and Oct. 31?

A. There was no money received or paid to Forrester Bros. or any of their representatives, so far as I know, on this business.

Q. And not from the time you first made the arrangement with Mr. Schaufler up to Oct. 31st?

A. None that I know of.

Q. None that you know of at all?

A. No sir.

Q. On any account?

A. Not on Forrester Bros. account. Well, on no account as far as my personal knowledge is concerned.

Q. Did you individually ship cars, like Mr. Fisher did, under this arrangement?

A. I did not.

Q. Did you individually receive back from the Kansas City Southern any money between the time these shipments began and Oct. 31st on account of business?

A. No sir.

Q. None whatever?

A. No sir.

Witness excused.

150 Plaintiff now read in evidence the deposition of John Hanley, taken in Kansas City, Mo. on the 22nd of May, 1902, as follows, to-wit:—

In the District Court in and for the County of Crawford and State of Kansas, Sitting at Pittsburg.

C. H. ALBERS COMMISSION COMPANY, (a Corporation), Plaintiff,
vs.

ROBERT L. FORRESTER and JOSEPH M. FORRESTER, Partners, Doing Business under the Style and Firm Name of Forrester Brothers, Defendants; The Kansas City Southern Railway Company (a Corporation), Garnishee.

STATE OF MISSOURI,
County of Jackson, ss:

Depositions of sundry witnesses, taken before me, James G. Smith, a Notary Public, within and for the county of Jackson, in the state of Missouri, on the 22nd day of May, in the year 1902, between the hours of eleven o'clock A. M. and six o'clock P. M., at the office of James G. Smith, in rooms numbers 950 and 951 in the New York Life Building, in the City of Kansas City in said county, pursuant to the annexed notice and agreement, to be read in evidence in behalf of the plaintiff, in an action pending in the district court, within and for the county of Crawford and state of Kansas, wherein the C. H. Albers Commission Company, a corporation, is plaintiff, and Robert L. Forrester and Joseph M. Forrester, partners, doing business under the style and firm name of Forrester Brothers, are defendants and the Kansas City Southern Railway Company, a corporation is garnishee.

151 Said plaintiff appeared by Paul F. Coste, its attorney, and said Garnishee appeared by O. W. Pratt, its attorney. Thereupon the said plaintiff produced the following witnesses in the following order:

Mr. PRATT: Mr. Coste, before we begin taking these depositions herein, as I understand it, the issue is between the plaintiff and the garnishee, I would like to have it appear that we—that is, the Kansas

City Southern Railway Company, the garnishee, admit an indebtedness to Forrester Brothers, the defendants, of forty nine dollars and eighty four cents (\$49.84). I make this admission in order that you may be advised that unless your recovery is in excess of that sum we shall not expect to be charged with any of the costs of this proceedings. The answer that was made in the case was made prior to the time that the existence of this indebtedness was ascertained, and we stand ready and willing, and in fact at the earliest possible moment shall correct our answer in respect to its allegation that nothing is owing. The sum of \$49.84 is admitted to be due. Of course who is entitled to that amount I cannot say.

Mr. COSTE: That is, of course, in itself no tender, merely an admission and statement of counsel.

Mr. PRATT: I can make no tender in the nature of things, because I do not know whether the plaintiff, the defendant, or some other attaching creditor may be entitled to this amount, but as to the fact that it is due, there is no dispute and no issue between ourselves and the plaintiff.

JOHN A. HANLEY, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth and nothing but the truth, deposeth and saith as follows:

152 Direct examination by Mr. COSTE:

Q. Mr. Hanley, will you state your full name?

A. John A. Hanley.

Q. Where do you reside?

A. Kansas City.

Q. What is your occupation at present?

A. Freight traffic manager of the Kansas City Southern Railway Company.

Q. How long past have you been in the same position or occupation?

A. Since June 25, 1898.

Q. Do you know Mr. Smythe?

A. Yes sir.

Q. What is his full name?

A. E. E. Smythe, I think—I don't know what his first initial is.

Q. What is Mr. Smythe's position?

A. He is general freight agent for the Kansas City Southern Railway Company.

Q. That is, in a general way, under your leadership? You are the head of the department?

A. Yes sir.

Q. Do you know Mr. Schaufler?

A. Yes sir.

Q. What is his occupation at present?

A. He is connected with the Orient Railway, I understand. Mr. Stillwell is president of the Orient Railway.

Q. What was his occupation, if you know, along in October, November and December of last year, and up to recently?

A. He was freight traffic manager——

WITNESS to Mr. FISHER: What road was he connected with?

Mr. FISHER: The O. K. C. & E., the O. & St. L.——

Mr. PRATT: I object to the witness testifying except what he knows of his own knowledge.

Mr. COSTE: We do not ask him to testify this way, but if he wishes to refresh his memory, we are willing he should.

153 A. (Cont.) In October 1901, Mr. Schaufler was freight traffic manager of the O. K. C. & E., the O. & St. L., the K. N. & N. G.—the Northern Connecting lines.

Q. Where is Mr. Schaufler now, if you know?

A. I understand on the Pacific coast.

Q. Do you know the firm of Forrester Bros. or R. L. Forrester and Joseph M. Forrester, who compose that firm?

A. Yes sir; these gentlemen (indicating Mr. Fisher and Mr. Catlin) are members of the firm and are about all I know. I don't think I know any other.

Q. Have you had any business with Mr. Fisher, who is present, or Mr. Catlin who is also present, in whose — these gentlemen acted with your road on behalf of Forrester Bros.?

A. No sir.

Q. Why do you say then that these gentlemen are members of that firm? What is the basis of your statement?

A. I think I became acquainted with them about the time they went out of business.

Q. Did you meet either of the Forresters at any time in St. Louis, Mr. Hanley?

A. No sir.

Q. Did you meet either of these gentlemen, or both at St. Louis?

A. No sir.

Q. At any time?

A. No sir.

Q. I will ask you whether the Kansas City Southern Railway, of which you are freight traffic manager, along in October, November and subsequent months, carried shipments of corn *were* made in the name of Forrester Bros.?

A. Yes sir.

154 Q. When did those shipments begin?

A. I think about September 27, 1901.

Q. And about what period did they cover?

A. I don't know exactly the time they quit shipping over the road.

Q. Can you state about how many cars of grain, or corn, were shipped in that series of shipments?

A. No sir I cannot.

Q. Was it more or less continuous shipments during the period you named, during those months of September, October and subsequent months?

A. I don't know.

Q. Of course the records or books of your office will show just how many cars?

A. They would show it; yes sir.

Q. Were shipped, and when they were shipped?

A. Yes sir.

Q. How were the freight charges for those shipments billed, and to whom?

A. That I cannot state; I have not handled the details. It is not my duty to handle the details of the business.

Q. In what office of your road would that be attended to?

A. The general freight office.

Q. That would be a matter regarding which Mr. Smythe could give us information?

A. Yes sir.

Q. Mr. Hanley, along when these shipments were begun, or shortly before that time, did you have any communication or conversation with Mr. Schaufler, as representative of the O. K. C. & E. road, with reference to these shipments that were then proposed to be made?

A. Yes, I had a conversation with him in my office.

Q. When this conversation occurred, on whose behalf did
155 Mr. Schaufler say that he was then trying to arrange with your road?

A. He did not mention any road.

Q. What occurred in that conversation between you and Mr. Schaufler?

A. Mr. Schaufler desired me to make a rate on grain from points on his line to Texarkana, Texas.

Q. What, if anything, was said by Mr. Schaufler in regard to the number of cars which he expected to use?

A. Nothing whatever.

Q. What rate did you make to Mr. Schaufler for shipments from here to Texarkana?

A. I made him no rate at all.

Q. He asked you for a rate, did he not?

A. He did; and I declined to make him a rate.

Q. How long after that was the first of these shipments forwarded by your road?

A. I don't know; I believe about the same date.

Q. While these shipments were going on, beginning in September of last year, did you have any conversation, or communication, in regard to these shipments, with C. V. Fisher or Edward F. Catlin, representing Forrester Bros. of St. Louis?

A. No sir.

Q. Was there any claim made by Forrester Bros. of St. Louis against your road for overpayment of freight on these shipments of corn?

A. I never head of Forrester Bros., until sometime in November, I think.

Q. I will ask you to state what you then heard, and how the matters of Forrester Bros. were brought to your notice, and who by?

156 A. Our general freight agent, Mr. Smythe, notified me that they had received certain notices from the O. K. C. & E. of overcharges on the grain on points of their line to Texarkana.

Q. Well, go on and state what was done about that between yourself and Mr. Smythe or any one representing Forrester Bros.?

A. Mr. Smythe stated that the O. K. C. & E. traffic department had sent him a bundle of papers claiming overcharges on shipments made subsequent to October 31, 1901. He claimed that there was no rate in effect after October 31 to points to which said shipments had been made. The records of the office showed him to be correct, and I directed him to return the papers to the O. K. C. & E. people.

Q. You understood then, that this claim contained in these papers that Mr. Smythe called your attention to, was made on behalf of Forrester Bros.?

A. It was made by the O. K. C. & E. people——

Q. Through them on behalf of Forrester Bros.?

A. Not on behalf of Forrester Bros. They were made just the same as one officer of a road would go to another in regard to shipments. At that time I never heard of Forrester Bros. and I believe Mr. Smythe had never heard of them. We did not talk about certain shippers.

Q. But the overcharges claimed for in these papers referred to shipments by Forrester Bros.?

Garnishee objects for the reason that the papers show for themselves.

Objection overruled by the court.

To which ruling of the court garnishee at the time duly excepted and excepts.

A. Yes sir, they did.

Q. You understood that?

A. Yes sir.

157 Q. At what rate did you carry these shipments from Kansas City to their destination up to October 31st?

A. We had a proportion rate in effect, of eight cents per hundred pounds from Kansas City to Texarkana, applying on shipments for the O. & St. L. lines.

Q. Would the same thing apply to the O. K. C. & E. road as to that rate?

A. It would; No, I wish to correct that. This rate was made from points on the O. & St. L., as I understand.

Q. These shipments of Forrester Bros. came to you through the O. K. C. & E. road, did they not?

A. No sir; their northern connecting lines, the O. & St. L. running out east.

Q. Up to October 31st, by whom were the freight charges on these shipments of Forrester Bros. paid, and were they prepaid before the shipments left Kansas City?

A. That is a matter I know nothing about; a matter of detail not handled in my office.

Q. This O. K. C. & E. road, is that a part of the general northern

system with which you connected from Omaha and that Neighborhood?

A. Yes, at that time it was.

Q. These shipments that came to you, of Forrester Bros. had been handled by the O. K. C. & E., had they not, that is, by their office?

A. The O. K. C. & E.—we call those three lines, the Northern Connecting lines, the O. K. C. & E. and the O. & St. L. As a matter of fact these shipments came into Kansas City over what is known as the Northern Connecting road.

Q. They were under the same management that you indicated when you mentioned the three roads for which Mr. Schaulfer was traffic manager?

158 A. Yes sir.

Q. Was there a change made by your road in the rate after October 31st?

A. Our records show that the line—I shall refer to the three roads as the O. K. C. & E.—we received notice from the O. K. C. & E. that this rate of eight cents per hundred pounds would expire October 31st, 1901. Our rates issued at the same time shows the same thing, that this rate expired October 31, 1901. They had no tariff after that date with our line—after October 31, 1901.

Q. This rate of eight cents applied to the charges of your road from here to Texarkana?

A. Texarkana, yes sir.

Q. After October 31, what rate was made by your road, generally, for shipments from here to Texarkana?

A. Well, our rate for part of the time after that was ten cents per hundred pounds, out of here; that was an open rate, this ten cents a hundred pounds—an open rate which a Kansas City man would have to pay to ship grain to Texarkana. That was further advanced to 14 cents per hundred pounds.

Q. When was that done? that further change?

A. I don't remember. I wish to add that if the O. K. C. & E. made shipments of corn by our line after October 31st, that they would have to pay the open tariff rate out of Kansas City—the Kansas City rate.

Q. Your road continued to carry the same amount of shipments of Forrester Bros. corn after October 31st, did you not?

A. They did, and claims came in, as before stated, claiming overcharges.

Q. The same as those you referred to some time ago?

A. Yes sir.

159 Q. Now, when next, Mr. Hanley, and by whom was the matter of overcharges on Forrester Bros. shipments brought to your notice?

A. Mr. Fisher and Mr. Catlin, representatives of Forrester Bros. called at my office one day, it was the first time I had ever seen the gentlemen, and claimed overcharges. I told them I did not know of them in the transaction; in fact, I did not know of them at all. I had the records looked up and found there was no merit in their claim.

Q. When was that, if you can recollect, approximately?

A. I cannot say. It was sometime in November or December.

Q. Do you know whether Mr. Smythe had done anything about that matter at that time, or about that time?

A. Mr. Smythe had no more authority after that tariff of October 31 had expired, than a section hand would have. He had hewed the line and simply declined the claim; first declined to the O. K. C. & E. and afterwards to these gentlemen, Messrs. Catlin and Fisher, as there was absolutely no merit in the claim.

Q. Did Mr. Smythe participate in this conversation that you refer to?

A. What conversation?

Q. Between these gentlemen representing Forrester Bros. and yourself?

A. Yes, I think Mr. Smythe was present at one meeting.

Q. These gentlemen, representing Forrester Bros. at the close of that conversation still insisted, did they not, that there was a claim?

A. We showed pretty clearly that there was no claim.

Q. I will ask you whether, at the end of that conversation, or during that conversation, you said anything in substance or to the effect that they should make some settlement of this matter with Mr. Smythe?

160 A. No sir. No sir.

Q. At any other conversation with these same gentlemen representing Forrester Bros. was anything said by you to that effect; that is to say, that you referred these gentlemen to Mr. Smythe to make a settlement of any claim they might have?

A. No. From the very start I instructed Mr. Smythe these claims had no merit in them whatever, and that they must be declined; of course he agreed with me. We had several conversations with them; we were being continually annoyed. We had Mr. Smythe go to St. Louis and I believe he saw them there. They worried the life out of me nearly. I simply may have said in an off hand way to see Mr. Smythe, not caring to have my own time taken up, but as far as instructing Mr. Smythe to pay any portion of those claims, why I did not do so.

Q. Mr. Smythe at all times acted under your instructions in this matter, Mr. Hanley, did he not?

A. No; not at all times. I cannot say that at all times he did, but as far as the observance of the tariff rate was concerned, he had no option; he had to observe that. I would have to do the same thing too.

Q. Although he had to observe them as a matter of official duty, were there instances when General Freight Agent Smythe would make a rate of his own without consulting you?

A. No, not on grain. Mr. Smythe had no authority whatever to make a rate on grain; that is, from Kansas City to that southern territory.

Q. I will ask you, as a matter of fact, whether Mr. Smythe did not, in this case of Forrester Bros. shipments, quote or make
161 a rate for your road on his own authority without consulting anybody else?

A. He had no authority to make a rate on grain. At the conversation that I referred to in the first part of this testimony, with Mr. Schaufler, I declined to make a rate, and Mr. Smythe came into the office about that time and made some remark about a war rate on Texarkana business; and stated that we might take a few cars from him, but I said no; but afterwards Mr. Smythe and I talked it over and I said, "If you think we can take a few cars it will be all right—on the eight cent rate," but I authorized him to make this eight cent rate—told him rather, I had no objection to his doing it.

Q. Then, if I understand you correctly, upon such authority as you have just stated, Mr. Smythe closed up this matter about which Mr. Schaufler at the time inquired?

A. There was no matter to be closed up; he simply made the eight cent rate beginning September 27, 1901, and expiring October 31, 1901; that is all there was to it.

Q. Did Mr. Smythe report to you what he had done, or agreed with Mr. Schaufler in regard to those shipments, and the number of cars and what rate?

A. Nothing at all about any given number of cars. As far as the rate is concerned, he named him a rate of eight cents a hundred pounds from Kansas City to Texarkana. Mr. Schaufler went to his office, confirmed this rate, limiting the time to October 31 himself, and we afterwards put out our tariff making the same time, that is, our tariff expired the same time as theirs, October 31.

162 Q. Did Mr. Smythe report to you at that time the shipments then under discussion between Mr. Schaufler and himself and you related to Forrester Bros. shipments?

A. No sir.

Q. You did not know at that time at all?

A. No sir.

Q. Or at any time until November when you say this matter was brought to your notice on a claim for overcharges?

A. He did not mention any one at all. He said he wanted to take a few cars from points on his line, and I told Mr. Smythe that if he wanted to take any cars from him he could do so.

Q. The freight bills on these shipments were paid directly *yo* you-road by the shippers, were they not?

A. I don't know as to that.

Q. You do not know that fact?

A. No sir.

Q. I will ask you whether, during this period beginning in September and running into the present year, January and February, your road at any time had any difficulty here in getting out from Kansas City to the south, shipments that came in? That is, from Forrester Bros. if on account you could not get them out?

A. In a general way I know they had trouble on account of the elevator being full, to which some of the grain was consigned here, if we were not able to furnish cars to that elevator at a certain time on account of the freight blockade?

A. About when was this blockade or inability to furnish cars?

A. Off and on all during the fall of 1901.

Q. You mean the early winter months—December?

A. Yes.

Q. What was the nature and length of the delay caused in that way?

163 A. On account of the elevator not being able to handle the business.

Q. How about the supply of cars on your road?

A. Why, like all other roads, in the fall of the year we were scarce of equipment. I would like to say here that when I afterwards learned that the O. K. C. & E. people tried to force business on us, I was very much surprised, because it had been our custom here every fall in putting out rates on grain, to take only a given number of cars. At times we would not be able to take more than fifty cars, on account of the scarcity of equipment. We are very cautious about that; have been at all times, not to take any large volume of business because it would be simply impossible to handle it.

Q. Did you have any conversation with any one representing Forrester Bros. or the O. K. C. & E. road handling their shipments, urging you to forward these shipments from here to their destination?

A. No sir we had not.

Q. Is it not a fact that shipments came in here of Forrester Bros. to go on from here south over your road, and they could not be forwarded by you for lack of cars?

A. We would not know Forrester Bros. at all.

Q. I refer to these shipments that belong to that series, and can be shown to be their shipments?

A. We did not know Forrester Bros., as I have said several times. We never heard of them in our lives before, and consequently we had no request from them nor from the O. K. C. & E. people to move their business.

Q. The road's business you mean?

A. I mean shipments made by Forrester Bros.

164 Q. From what you know now, Mr. Hanley, you know that at that time and during this blockade trouble, the Forrester Bros. shipments were included in that O. K. C. & E. business that you could not handle, do you not?

A. I knew that after the date that I——

Q. (Interrupting.) Got notice of these claims?

A. About that time, yes sir.

Q. And these shipments continued after that time, didn't they?

A. A man would be crazy to contract freight on the basis that they claim this business was contracted, eight cents a hundred pounds from Kansas City to Texarkana, after the tariff had expired, or after that eight cent rate had expired. I understood from conversations with Forrester Bros. and also with Mr. Schausler of the O. K. C. & E. Railway that three-fourths of all the business on which the claims were made was after the eight per cent rate had expired.

Q. That they had made contracts for three-fourths of the business after the rate had expired?

A. I understood that Mr. Schausler and representatives of For-

rester Bros. claim that they had contracted grain after this rate had expired.

Q. If, however, a man had made a contract with your road at a fixed rate to ship a certain amount of stuff, or number of cars, he would not be crazy if he expected you to do that, would he?

A. I would like to state that if a man working under my jurisdiction was to contract for one hundred cars of grain in the fall of the year, the time they claim these contracts were made, I would dismiss him.

Q. Was there at any time a telegram from an official here representing Forrester Bros. to Mr. Schaufler, called to your attention in which the official called for 600 cars from your road.

A. No sir.

165 Q. Did you have any conversation with Mr. Schaufler on any such subject as that, calling for a certain number of cars?

A. Well, Mr. Schaufler, as he had done before, called upon us for cars, but there was no specific number of cars asked for.

Q. When was that that he called for cars?

A. I don't know.

Q. During this period of those months mentioned? During the time from September 27?

A. During the time from September 27 to November or December sometime. If he had ever called on me for 600 cars I think I would have had heart failure. As I have stated, in the fall of the year we do not permit any of our men to contract freight for any large number of cars for grain for the simple reason it would have been a physical impossibility to have moved it, and we certainly would not have made a rate,—we would not have solicited business up there and made a rate of eight cents when the rate here was ten cents, and when we were turning down business here on account of not having equipment.

Q. Is there an officer of your road, Mr. Hanley, whose special business it is to regulate and manage the supply of cars, and to give the other officers, yourself for instance as head of the freight department, information as to what cars are available at any time?

A. Yes.

Q. Who is that officer?

A. Master of transportation.

Q. Do you remember during this period—Mr. Schaufker's request for cars—to have referred the matter to this officer, or sought information from him as to what could be done in the matter of furnishing cars?

166 A. I have gone to our master of transportation many times to ascertain whether or not he had equipment to move certain business.

Q. I suppose that was at the time of this blockade, was it not?

A. There is a blockade in the yards here in Kansas City every fall on nearly every line; we have not missed a single year yet that we have not had more or less trouble in getting our freight through the yards here in Kansas City.

Q. Who was that officer—the master of transportation,—at that time?

A. Mr. Rawlins.

Q. Is he here now?

A. Yes sir.

Q. What is his full name?

A. I don't know what his initials are, I think F. W. Rawlins.

Q. After the last conversation that you have referred to in your testimony, between these gentlemen, Messrs. Fisher and Catlin and yourself, was there anything further on the subject of Forrester Bros.' claims brought to your notice by them or some one on their behalf?

A. I do not understand you?

Q. You have testified about a conversation at which Mr. Smythe was present, after that were there further conversations between these gentlemen and yourself on the same subject?

A. We had several conversations about that.

Q. At different times there were conversations down to the present date, I suppose?

A. And each time they were distinctly told there was no merit in their claim.

Q. How many times, if you can approximate, were those subjects discussed between those parties and yourself?

A. I don't know.

167 Q. When you say that Mr. Smythe went down to St. Louis or this matter, and, as I understood you, to see these gentlemen on this subject, did you send him down there, Mr. Hanley?

A. No sir; I didn't know he had gone. He went there on some railroad matters and I think saw them at the same time.

Q. What did he report to you when he came back in regard to the matter?

A. He reported having had a conversation with the gentlemen down there, and that he had said he was sorry he could not do anything for them. I don't know but what he said he would take the matter up with me when he got back. At least I knew he had some conversation with the gentlemen in St. Louis.

Q. When was it that he made this trip down there, as near as you can fix the date?

A. I don't know. Some time last fall or early winter.

Q. November or December?

A. Along there.

Q. Then, as I understand you, Mr. Smythe went down there on this business to see these gentlemen entirely on his own authority?

A. He went down to attend a railroad meeting, and saw these gentlemen while he was in St. Louis—some of the Forrester Bros.—some body connected with their firm.

Q. Is that all the report he made to you of what occurred down there?

A. That is all the report.

Q. Did you say that you did not know the business that took Mr. Smythe down to St. Louis on that occasion, Mr. Hanley?

A. It was business connected with railroad matters.

Q. Mr. Hanley, how many roads are engaged, out of Kansas City, in the Texas trade?

A. Three or four.

168 Q. What are they?

A. The M. K. & T.

Q. That is the Missouri, Kansas and Texas?

A. Yes. The Frisco system.

Q. The St. Louis and San Francisco system?

A. Yes sir; and the Fort Scott & Memphis.

Q. The Frisco business is done over a road called the Fort Scott & Memphis road?

A. Yes sir.

Q. And your road?

A. Yes sir.

Q. What is your road?

A. The Kansas City Southern.

Q. What was the old name of your road?

A. Kansas City, Pittsburg & Gulf.

Q. That is commonly known as the Stillwell road?

A. Yes sir.

Q. From here to Port Arthur?

A. Yes sir.

Q. What arrangement,—tariff arrangements,—were there between your road and those other two roads for Texas and Gulf business? I wish to confine your answer to the question of arrangements as to grain traffic, not going all over the freight law tariff.

Garnishee objects as incompetent, irrelevant and immaterial.

Objection sustained by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. Now, Mr. Witness, is it not a fact that along about the latter part of October or first of November, 1901, the three roads out of here that you have referred to, entered into an arrangement for the regulation of charges,—transportation charges—for grain from this point to Texas points. What do you say to that, Mr. Witness?

Mr. PRATT: Under attorney's instructions he refuses to answer.

Mr. COSTE: I insist the witness must make his answers and objections and not his attorney.

WITNESS: I would like to correct a statement I made.

169 Mr. COSTE: Answer the question first, then make the correction.

A. It is customary for all roads to agree upon rates to be charged the regulations as well as the rates to govern transportation of freight. If they did not do that there would be—the rates would be staple.

Q. Now you can make your explanation.

A. When I referred to the three roads I should have included all of the following: The Missouri Pacific; Rock Island, A. T. & S. F.; M. K. & T.; Frisco System and Kansas City Southern. I think that is all.

Q. Was there such an agreement in existence prior to the 31st of March 1901?

A. It has always been the custom to agree upon rates; at times when a company learns of another company cutting rates, they take

independent action, but as a general rule they do agree upon rates and rules and transportation.

Q. You have not quite answered my question; was there a definite arrangement in existence between these roads prior to the 31st day of October, 1901, for this grain traffic to Texas points?

A. Do you mean that the roads had agreed on certain rates?

Q. Yes, a definite agreement?

A. Yes sir.

Q. It was in existence then?

A. Prior to September 27th?

Q. Prior to September 27th?

A. Yes sir.

Q. That was in existence between September 27th, 1901, and the 31st of October 1901?

A. I will have to answer yes.

Q. Isn't it a fact that between the dates I have last named, that agreement had fallen apart and was being re-adjusted?

A. During that time the rate was fixed at 10¢ per hundred pounds.

170 Q. Was it maintained?

A. It was.

Q. Is it not a fact that the business that took Mr. Smythe down to St. Louis at the time you referred to, when he met representatives of Forrester Bros. there, was for negotiations with these other roads with reference to the renewal, or correction of that rate between here and Texas points?

A. I do not remember whether that was it or not.

Q. Isn't it a fact that the whole trouble in this case has occurred over the fact that when you readjusted with the other roads here, your rates on southern trade traffic and grain carrying, that your people forget about your arrangement with the O. & St. L. or the O. K. C. & E. road, and left it out in making that arrangement, and isn't that where the trouble came from?

A. Absolutely no.

Q. And it is not a fact that Mr. Smythe, under your approval, endeavored to have these roads allow you to make an exception of this particular transaction?

A. No sir.

Cross-examination by Mr. PRATT:

Q. You say that an eight cent rate was made from Kansas City to Texarkana, that was an agreement with reference to a division of the rate rather than a rate from Kansas City to Texarkana?

A. It was a proportional rate.

Q. That is, you agreed to accept eight cents as your proportion of the through rate from some point north?

A. Yes sir.

Q. That is what you mean when you speak of an eight cent rate?

A. Yes sir.

171 Q. I will ask you whether you know of your own knowledge anything with reference to this arrangement between

these northern lines you call the O. K. C. & E. system, of your own knowledge do you know anything about it?

A. Nothing whatever.

Q. You are just testifying from hearsay?

A. Yes sir.

JOHN A. HANLEY.

Subscribed and sworn to before me this 20th day of June, 1902.

[SEAL.]

JAMES A. SMITH,

Notary Public.

Mr. CRANE: At this point I desire to renew my objection and motion to strike out those portions of the testimony of the witness-Schaufler, Forrester and Catlin as to any arrangement or agreement in regard to any rate made by the Kansas City Southern Railway Company with Mr. E. E. Smythe after the 31st of October, 1901, for the reason that it now appears from the testimony offered by the plaintiff that Smythe had no authority whatever in regard to that matter after that date; that he was expressly denied any authority by Mr. Hanley, who was his superior officer in charge of the traffic department, and it further appears that there was no authority on his part either to make any agreement in regard to rates after that date or to make any admissions in regard thereto binding on the garnishee in this case.

Objection overruled, and Motion overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

172 Plaintiff, in further support of its issues, called C. E. Woodbury as a witness, who being first duly sworn, testified as follows:

Direct examination by Mr. COSTE:

Q. State your name to the jury?

A. C. E. Woodbury.

Q. You are the clerk of the district court of Crawford County, Kansas?

A. Yes sir.

Q. It is agreed that judgment was rendered in case of Albers Commission Company vs. Forrester Brothers, and recorded in Journal A of the district court of Crawford county, Kansas, sitting at Pittsburg, at the June term 1902, at page 204.

Journal entry here read by C. E. Woodbury, which appears in full on page (j) of this case-made.

Witness excused.

It is agreed between the parties hereto that within the time required by law the plaintiff in this case elected to take issue on the answer of the garnishee, and served notice on the garnishee, as required by law, in writing.

The hour of six o'clock having arrived, court was adjourned until nine o'clock Friday morning, June 1st, 1906.

Court opened at nine o'clock A. M. Friday morning, June 1st, 1906. Parties all present as at beginning, and trial proceeded as follows:

173 It is stipulated between the parties hereto that the amount in excess of 8 cents per hundred pounds charged and collected by garnishee on Forrester Bros. shipments in controversy from Kansas City to Texarkana and southern points, as shown by expense bills offered in evidence, amounts to \$10,620.98.

C. E. WOODBURY, recalled by plaintiff, testified as follows:

Q. What was the amount of that judgment?

A. The interest on the judgment is \$2449.07.

Q. Give us also the total cost accrued in this case?

A. The total costs are \$71.85, the total amount of deposition fees taxed in this case, \$113.04; garnishee fee of \$2.00, makes total of costs taxed, deposition fees and garnishee fee of \$12969.68.

Q. The figures you gave us a moment ago for the costs in this case included the issues between plaintiff and garnishee, did they not?

A. Yes sir.

Q. Deduct those costs and mention the figures only of costs that accrued up to the time the judgment of the Albers Commission Company vs. Forrester Brothers was rendered, what is the amount of the costs?

A. The amount would be less the amount of \$26.30, which is the amount of the costs accrued from the filing of this case up to the date of judgment in favor of plaintiff, and against Forrester Brothers.

Q. Then that is the amount?

A. \$26.30 should be deducted from the amount given.

Q. Deduct the amount when, include these deposition fees, and give us the balance; that is the costs in the case up to the time of the rendition of the judgment against Forrester Brothers.

174 A. \$12809.09 is the correct amount of the judgment, interest and costs in the case of the Albers Commission Company vs. Forrester Brothers.

Witness Excused.

Thereupon, the plaintiff having introduced all its testimony and evidence in support of the issues on its part, in chief, rests its case.

Thereupon, after plaintiff had rested its case, Garnishee, The Kansas City Southern Railway Company, filed its demurrer herein, as follows:

In the District Court of Crawford County, Kansas, Sitting at
Pittsburg.

THE ALBERS COMMISSION COMPANY, Plaintiff,

vs.

FORRESTER BROTHERS, Defendants; THE KANSAS CITY SOUTHERN
RAILWAY COMPANY, Garnishee.

Demurrer to Evidence.

Comes now the Garnishee in the above entitled cause at the close of the plaintiff's evidence and the conclusion of their case in chief and demurred to the evidence for the reason that said evidence in its entirety does not establish any liability against this garnishee and is wholly insufficient to entitle plaintiffs to recover and it fails to show any right of action in favor of plaintiff against the garnishee.

Wherefore the garnishee asks the Court to declare it to be insufficient.

CYRUS CRANE AND
W. J. WATSON,

Attorneys for Garnishee.

Endorsed: # 161. Albers Com. Co. vs. Forrester Bros.
175 Def't K. C. S. Ry. Co. garnishee. Demurrer to evidence.
Filed Jun- 1, 1906. C. E. Woodbury, Clerk Dist. Court. By
R. J. Dickey, Deputy.

176 It is agreed between the parties hereto that stipulation
marked Exhibit C., although entitled in the case of Fields &
Slaughter vs. Kansas City Railway Company, Garnishee, may be
admitted under this case and our general stipulation.

Garnishee offers in evidence stipulation marked Exhibit C., in
words and figures as follows, to-wit:

In the District Court of Crawford County, Kansas.

FIELDS & SLAUGHTER COMPANY, Plaintiff,

vs.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Garnishee.

1. It is agreed that the telegram dated October 31st, 1901, to
J. M. Smith and signed E. E. Smith, marked Exhibit "A" (being
Ex. D in this case) was sent by Mr. Smythe, General Freight Agent
of the Kansas City Southern Ry. Co. to the Auditor of the Inter-
state Commerce Commission on October 30th, 1901.

2. It is agreed that the letter signed E. E. Smythe, G. F. A. The
K. C. S. Ry. Co. to J. M. Smith, marked Exhibit "B" (being Ex.
E. in this case) was sent by Mr. Smythe General Freight Agent of
the Kansas City Southern Railway Co. to the Auditor of the Inter-

state Commerce Commission on October 31st, 1901; that the paper marked "Amendment 7 to Interstate Commerce Commission No. 1010, hereto attached, marked Exhibit "C" (being Ex. F. in this case) accompanied the letter and both were received by the Interstate Commerce Commission on November 4th, 1901, and duly filed.

3. It is agreed that the letter from E. E. Smythe, G. F. A., to J. M. Smith, hereto attached, marked Exhibit "D" (being Ex. G. in this case) was sent by Mr. Smythe, General Freight Agent of The Kansas City Southern Ry. Co. to the Auditor of The Interstate Commerce Commission on July 10th, 1901; That the paper hereto attached marked Exhibit "E" (being Ex. H. in this case) was sent with said letter and both received by the Auditor of the Interstate Commerce Commission on July 13th, 1901, and duly filed.

4. The plaintiffs reserve the right to object to the materiality or relevancy of these documents and plaintiffs do not admit that any of said papers show, without further proof, any official force and effect in themselves; What they prove, if anything, and their legal effect is not admitted.

J. M. WAYDE AND

PAUL F. COSTE,

Attorneys for Plaintiff.

CYRUS CRANE,

W. J. WATSON, AND

S. W. MOORE,

Attorneys for Defendant.

Garnishee offers in evidence telegram attached to stipulation, marked Ex. D, a copy of which is as follows:

KANSAS CITY, Mo., 10, 30, 1901.

From ———.

To J. M. Smith, Auditor I. C. C., Washington, D. C.:

JAX. Effective November tenth will issue amendment to

I. C. C. ten *ten* making rates from Kansas City to points common to Texarkana and Shreveport on corn and articles taking corn rates fourteen cents, and on corn meal and articles taking corn meal rates sixteen cents per cwt. minimum weight thirty thousand pounds except where marked capacity of car is less.

E. E. SMITH.

WIS-RLM.

Plaintiff moves to strike out Ex. D. as incompetent, irrelevant and immaterial to the issues of this case, as shown upon its face, and has nothing to do with the joint through rate over the roads over which this grain was shipped between the points of origin and points of destination, and does not purport to create either directly or indirectly any joint through tariff between the Northern Connecting lines and the Kansas City Southern Railway Company.

Motion overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

178 Garnishee now offers in evidence letter attached to stipulation, marked Ex. E., a true copy of which is in words and figures as follows:

Plaintiff objects to the introduction of Ex. E. as incompetent, irrelevant and immaterial.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Port Arthur Route.

Samuel W. Fordyce, Webster Withers, Receivers.

Kansas City, Pittsburg & Gulf Railroad Co.

Traffic Department.

KANSAS CITY, Oct. 31, 1901.

Advice No. 1205.

J. M. Smith, Esq., Auditor of Inter-State Commerce Commission, Washington, D. C.

DEAR SIR: In compliance with the requirements of Section 6 of the Act to Regulate Commerce, I transmit herewith, for filing with the Commission, copies of 5 tariffs as follows:

	No.	Series.	Date effective.	Description.
Amdt.	1	1032	As noted.....	Oil Beaumont, etc., to various.
"	28	910	11 / 10.....	C. & C. Def. Terrys & Shreveport & etc.
"	38	871	As noted.....	C. & C. Def. Terrys & Miss. Valley.
"	1	1054	11 / 6.....	Corn K-C. S. pts. & M. Pac. pts.
ICC.		1057	11 / 6.....	Gravette, Ark., to So. West City, Mo.
Amdt.	7	1010	As noted.....	Grain Mo. River to Miss. Valley.

E. E. SMYTHE,
G. F. A. The K-C-S. R'y Co., Kansas City, Mo.
Per A. R. HOUSE.

179 Garnishee offers in evidence Amendment No. 7, referred to in letter and telegram, marked Ex. F., which amendment, by stipulation, is shown *yo* have been sent by Mr. Smythe of the K. C. S. and duly filed with the Interstate Commerce Commission.

Plaintiff objects to the introduction of Ex. F., as being incompetent, irrelevant and immaterial.

Objections overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A true copy of Amendment No. 7, is in words and figures as follows:

Amendment No. 7 (Cancels Previous Amendments) to I. C. C. No. 1010.

Port Arthur Route.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., in Connection with Lines Named on Page 2.

Amendment No. 7, Joint Tariff.

Port Arthur Route No. 715-D.

Proportional Rates Applying on Grain, Grain Products, Hay and Straw, Carloads, from Kansas City, St. Joseph, Mo., Atchison and Leavenworth, Kas., West Line, Grand View, Hume, Richards, Katy, Mo.; Pittsburg, Kas.; Asbury, Gulton, Burgess and Joplin, Mo., to Texarkana, Tex.; Shreveport, Monroe, Alexandria, Baton Rouge, New Orleans, Lake Charles, West Lake, Minden, La.; Vicksburg, Jackson, and Meridian, Miss.; also stations on Texas & Pacific Ry., Southern Pacific Co. (Atlantic System) in Louisiana taking New Orleans Rates, Points on the Vicksburg, Shreveport & Pacific R. R. and the Kansas City, Watkins & Gulf Ry.

Issued October 31, 1901. Effective as Noted.

Rates named in the amendment are proportional rates, applying only on shipments originating at points on connecting lines.

W. C. DENNIS,

A. G. F. A., The K. C. So. Ry. Co., Kansas, City, Mo.

E. E. SMYTHE,

G. F. A., The K. C. So. Ry. Co., Kansas, City, Mo.

CHAS. E. PERKINS,

G. F. A. T. & Ft. S. Ry. Co.,

A. G. F. A., The K. C. So. Ry. Co.

J. H. HANLEY,

F. T. M., The K. C. So. Ry. Co., Kansas City, Mo.

Authority No. 5417.

Mailed to I. C. C. from Kansas City, Mo., October 30, 1901.

Amendment No. 7 to Joint Tariff, Port Arthur Route No. 715-D.

Dates named herein will apply in connection with the following lines:

Alabama & Vicksburg Ry., T. F. Steele, Gen'l Frt. Agt., New Orleans, La.

Chicago Great Western Ry., S. O. Brooks, Gen'l Frt. Agt., St. Paul, Minn.

180 Kansas City Northwestern Ry., W. C. Stith, Frt. Traffic Mgr., St. Louis, Mo.

Kansas City, St. Joseph & Council Bluffs R. R., D. O. Ives, Gen'l Frt. Agt., St. Louis, Mo.

Kansas City, Watkins & Gulf Ry. (Henry B. Kane, Receiver), C. W. Hole, Gen'l Frt. Agt., Lake Charles, La.

Louisiana & Arkansas R. R., B. S. Atkinson, Gen'l Frt. Agt., Stamps, Ark.

Missouri Pacific Ry., J. C. Lincoln, Gen'l Frt. Agt., St. Louis, Mo.

New Orleans & Northeastern R. R., T. F. Steele, Gen'l Frt. Agt., New Orleans, La.

Southern Pacific (Atl. System), W. H. Masters, Ass't Trf. Mgr., New Orleans, La.

St. Joseph & Grand Island Ry., S. M. Adsit, Gen'l Frt. Agt., St. Joseph, Mo.

Texas & Pacific Ry., E. L. Sargent, Gen'l Frt. Agt., Dallas, Texas.

Vicksburg, Shreveport & Pacific R. R., T. F. Steele, Gen'l Frt. Agt., New Orleans, La.

Amendment No. 7 to Joint Tariff, Port Arthur Route N- 715-D.

Refer to tariff and make the following additions and corrections:

Date effective.	From—	To—	Commodity.	Rate in cents per hundred pounds.
Oct. 20, 1901.	Kansas City, Mo. ...	Lake Charles, La.	Wheat Flour (except potato flour), and articles taking same rates as shown in tariff as amended	19
	St. Joseph, Mo.	West Lake, La.		
	Atchison, Kans.	New Orleans, La.		
	(Reissued). Leavenworth, Kas., and other points taking same rates, as shown in tariff.	Baton Rouge, La. Vicksburg, Miss., and points taking same rates.		
November 1, 1901.	(Reissue.) Do.	Jackson, Miss... Meridian, Miss..	Wheat Flour (except potato flour), and articles taking same rates as shown in tariff as amended	17
			Corn, Kaffir Corn, Rye and articles taking same rates, as shown in tariff as amended.....	20
			Corn, Kaffir Corn, Rye, Oats, Barley, Grain Screenings, Purina Feed Corn and Oats Chop, Sorghum, Seed and Corn Chops, C. L. min. wt. 30,000 lbs.	18
November 10, 1901.	Do.	Texarkana, Tex. Shreveport, Tex.	Corn Meal, Bran, Grits, Hominy, Hominy Feed, Brewer's Meal, Brewer's Grit and Mill Feed, C. L. min. wt. 30,000 lbs.	14
			I. C. C. notified by wire Oct. 30, 1901.	16

181

Application of Rates.

Effective November 5, 1901.

Flour Rates, Named in Tariff as Amended, will also Apply on Wheat Chop and Flaked Wheat, C. L.

Kansas City, Watkins & Gulf Ry.

Effective October 31, 1901, Except as Noted.

Cancel basis for rates, shown in Tariff, to Stations on the K. C. W. & G. Ry. and substitute following:

Rates to the following points on the K. C. W. & G. Ry. will be made ten (10) cents per 100 pounds higher than Alexandria, La., Annandale, Bayou Bouef, Blanche, Bon Air, Canton, Chesters, Dewey, Fento, Foley, Fords, Forest Hill, Funston, Glenmora, Guiadry, Hewett, Hewetts No. 2 High Point, Hobson Spur, Houston, Iles, Iowa Jet., Kinder, Long Leaf, Lyles, Mace, Manchester, Oakdale, Oberlin, Pawnee, Rogers Spur, Thompson Spur, Valde Rouge, Woodlawn, Woodworth, Wye, La.

(Effective September 5, 1901. Reissue.) Corn rates will also apply on Corn and Oat Chop when destined to points on the K. C. W. & G. Ry.

#No. Agent. Freight must be prepaid.

Amendment No. 7 to Joint Tariff, Port Arthur Route No. 715-D.

Vicksburg, Shreveport & Pacific R. R.

(Effective October 31, 1901.)

Cancel basis for rates to points on the V. S. & P. R. R. as shown in Tariff, and substitute the following:

Rates to the following points on the V. S. & P. R. R. will be five cents per hundred pounds higher than rates to Shreveport, La.:

Altoona, La., Arcadia (Bienville Parish), La., Atkinaon, La., Barnes, La., Bayou Macon, La., Bee Bayou, La., Boeuf River La., Calhoun, La., California, La., Cheniere, La., Choudrant, La., Crew Lake, La., Delhi, La., Delta Point, La., Ford's La., Forksville, La., Foster's La., Gibbsland, La., Fleming, La., Doyle, La., Dubberly, La., Dunn's, La., Eldorado, La., Girard, La., Grambling's Mill, La., Gravel Pit, La., Houghton, La., Haynes, La., Henderson Mill Spur, La., Holly Ridge La., Lake One, La., Lemax, La., Lums, La., Monzingo, La., Margan's, La., Mounds, La., Quebec, La., Rayville, La., Richmond, La., Ruston, La., Sibley, La., Simsboro, La., Tallulah, La., Taylors, La., Tendall, La., Tremont, La., Wadley, La., Waverly, La., Whited, La.

Minimum Weights.

(Effective November 12, 1901.)

Correct the minimum weight on grain, and grain products (not including seeds), to all points named in tariff, to read 30,000 pounds, except where the marked capacity of the car is less, in which case the marked capacity will be the minimum.

Correct the minimum weight on Flax, Millet and Timothy Seeds, to all points in Tariff, to read 30,000.

182

Grain or Seeds in Mixed Carloads.

(Effective November 5, 1901.)

On shipments of mixed carloads of grain or seeds, (except garden seeds), from one consignor to one consignee, the carload rate and actual weight, subject to a minimum weight of 30,000 pounds per car, on each kind of grain or seed will be charged, provided that all or all but one of the different kinds of Grain or Seeds are sacked. In order to obtain the charges where the actual weight of the carload is less than 30,000 pounds, the articles taking the higher rate will be charged for at actual weights, and the balance required to make up the minimum will be added to the articles taking the less rates.

Estimated Weights on Flour and Meal.

(Effective November 5, 1901.)

Cancel basis for estimated weights on Flour and Meal, as shown in Tariff and substitute the following:

Shipments of flour and meal, in sacks or barrels in carloads, will be billed at the following estimated weights:

Barrels	200 pounds.
Whole sacks	98 pounds.
Half sacks	48 pounds.
Quarter sacks	24 pounds.

Except where actual weights as shown by stencil marks on sacks are less, in which event, latter will govern.

No Agent. Freight must be prepaid.

183

Garnishee now offers in evidence Exhibit G., in words and figures as follows, to-wit:

Plaintiff objects as incompetent, irrelevant and immaterial.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Port Arthur Route.

Samuel W. Fordyce, Webster Withers, Receivers.

Kansas City, Pittsburg & Gulf Railroad Co.

Traffic Department.

KANSAS CITY, *July 10, 1901.*

Advice No. 1134.

J. M. Smith, Esq., Auditor of Inter-State Commerce Commission,
Washington, D. C.

DEAR SIR: In compliance with the requirements of Section 6, of the Act to Regulate Commerce, I transmit herewith, for filing with the commission, copies of 3 tariffs, as follows:

ICC.	No.	Series.	Date effective.	Description.
			1901.	
Amdt.	22	910	7 / 9	C. & C. between K. C., St. Louis and Shreveport, &c.
"	11	911	7 / 13	Gr. and Grain Prod. K. C. to Texarkana and Shreveport.
I. C. C.	1014		7 / 15	Cantaloupes, etc., K. C. So. Sta. to various.

E. E. SMYTHE,
G. F. A. *The K. C. So. Ry Co.,*
Kansas City, Mo.
Per A. R. HOUSE.

Auditor's Office, July 13, 1901. 28041. Interstate Commerce Commission.

184 Garnishee now offers in evidence Exhibit H., in words and figures as follows, to-wit:

Plaintiff objects to the introduction of Exhibit H. as incompetent, irrelevant and immaterial.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Adt. No. 11 to I. C. C. No. 911.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith
Railway Co.

Port Arthur Route.

In Connection with Chicago Great Western Ry., Kansas City, St.
Joe & Council Bluffs R. R., Missouri Pacific Ry., St. Joseph &
Grand Island Ry.

Advance No. 11. To Amendment No. 1.
T. & F. S. No. 152-D. "P. A. R." No. 715-C.

Joint Tariff, Proportional Rates Applying on Grain, Grain Products,
Hay & Stra-, Car Loads from Kansas City, St. Joseph, Mo., Atchi-
son, Leavenworth, Kansas and points taking same rates in Tariff
to Texarkana, Tex.; Shreveport, Monroe, Alexandria, Baton
Rouge, New Orleans, Lake Charles, West Lake, La.; Vicksburg,
Jackson, and Meridian, Miss., etc.

Issued July 10th, 1901. Effective July 13th, 1901.

Refer to above numbered tariff, as amended and make the fol-
lowing correction:

From—	To—	Apply on—	In cents per 100 pounds.
Kansas City, Mo., Texarkana, Tex., and points common. Shreveport, La...		Corn, Kaffir Corn, Rye, Oats, Bar- ley, Purina Feed, Corn and Oats Chops, Grain Screenings, Sor- ghum Seed and Corn Chops, C. L. min. wt. 40,000 lbs.	10
		Corn Meal, Bran, Grits, Hominy, Hominy Feed, Brewer's Meal, Brewer's Grits and Mill Feed, C.L. minim'm weight, 40,000 lbs.	12

This advance notice will be cancelled upon the issue of amend-
ment No. 1 or reissue of tariff.

Attach this to tariff and make it part of same.

E. E. SMYTHIE,
G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

CHAS. E. PERKINS,
G. F. A., T. & F. S. Ry. Co., Texarkana, Texas.

185 Authy. No. 5085.
Mailed to I. S. C. C. from K. C., Mo., July 10th, 1901.
I. C. C. Notified by wire July 10th, 1901.

Plaintiff moves to strike out Exhibits E. F. G. and H., offered in evidence by garnishee, for the reason that the same are incompetent, irrelevant and immaterial; and move to strike out each one of said exhibits separately.

Motion overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

By agreement of counsel, the jury was at this time discharged from further consideration of the case, and trial proceeded with to and by the court. Jube 1st, 1906. 11 o'clock A. M.

186 F. M. KING, called as a witness on behalf of garnishee, being duly sworn, testified as follows:

Direct examination by Mr. CRANE:

Q. State your name please.

A. F. M. King.

Q. What is your business, Mr. King?

A. I am local agent for the Kansas City Southern at Pittsburg.

Q. How long have you been local agent for that company at Pittsburg?

A. Since December, 1901.

Q. In connection with your duties, Mr. King, as local agent, state whether or not you have anything to do with the matter of freight rates?

A. Well, the only thing is carry them out.

Plaintiff objects as not responsive to the question.

Q. Just state whether you do or not?

A. I do.

Q. Just explain what you have to do with it?

Plaintiff objects as incompetent, and irrelevant and immaterial, to the issues in this case; calling for an opinion and conclusion of the witness.

Objection overruled by the court. To which ruling of the court plaintiff at the time excepted and excepts.

A. I see that the proper rates are assessed according to tariff covering the commodity moving in or through the station of which I have charge.

Q. In connection with your work, Mr. King, during the past 5 years, do you have occasion to use these things we call tariffs?

A. I do, yes sir.

Q. Those tariffs, that is the name of the instrument gotten up by the railroad company to show its various rates, is it not?

Plaintiff objects: the tariff shows for itself what it is.

Objection overruled by the court. To which ruling of the court Plaintiff at the time duly excepted and excepts.

Q. Just tell us, Mr. King, what is meant by the word "tariff," as used in the freight part of the railroad business?

187 A. The tariff is an instrument showing the rate to apply or be applied from one point to another on different commodities, on one or more commodities.

Q. Now, if you know, I wish you would state what is meant, if it has a well defined meaning,—first I will ask you if in railroad business and on the Kansas City Southern, the word “proportional rates” have a well defined and well understood meaning?

Plaintiff objects as incompetent, irrelevant and immaterial, calling for an opinion and conclusion and assuming the witness is qualified to answer the question.

Q. I will ask if you know, whether or not the words “proportional rates” have a well defined and understood meaning in railroad business, and on the Kansas City Southern?

A. They have, yes sir.

Q. Now just tell briefly what those terms mean, those words, “proportional rates” if you know.

Plaintiff objects as incompetent, irrelevant and immaterial, calling for an opinion and conclusion of witness, witness has not shown himself qualified to answer question, and calling for the contents of a written instrument. The tariff shows for itself.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. A proportional rate is a rate put in to cover business moving from points,—coming to our lines from other points, applying to commodities where we have no through rates. It is put in in order to protect a shipper on a long haul. For instance, a shipment coming from,—say flour coming from points out in Kansas, where there is no through rate published, coming into Pittsburg, we accept it from the connecting line and bill it out then on a proportional rate, which is less than the local tariff rate.

188 Q. Now you spoke there of a local tariff rate; if those words have a well defined meaning, I wish you would state what those are?

Plaintiff objects as incompetent, irrelevant and immaterial, calling for an opinion and conclusion of the witness, and witness has not shown himself qualified to answer.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. A local rate is a rate applying locally from one station to another on the same road.

Q. In that term “local rate” as distinguished from “proportional rate,” how about the origin of the shipment?

A. That is where it originates and terminates on the same line.

Q. Now Mr. King, did you ever hear the expression “common points” in the railroad business and on the Kansas City Southern, speaking of freight rates?

A. Yes sir.

Q. Do those words have a well defined meaning in the railroad business and on the Kansas City Southern?

Plaintiff objects as incompetent, irrelevant and immaterial, calling for an opinion and conclusion of the witness.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. Now will you please tell us, if you know, what is meant by those words "Common points," used in connection with freight rates?

A. Common points are points common with each other. For instance, Colorado; Denver, Pueblo, Colorado Springs are termed common points and take what is termed a common point rate, a rate to any one of these points apply to all of them.

Q. Do you know whether or not Omaha and Council Bluffs are common points with Kansas City on shipments to go south into Texarkana and Shreveport over the line of the Kansas City Southern?

189 Plaintiff objects as incompetent, irrelevant and immaterial, a matter to be determined by the Interstate Commerce Commission themselves, and witness has not shown himself qualified to answer, and simply calling for hearsay testimony.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. I know, yes sir.

Q. State whether or not they are?

Plaintiff objects as incompetent, irrelevant and immaterial, calling for an opinion and conclusion of the witness, and calling for hearsay testimony.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. They are not common points with Kansas City.

Q. Do you know whether St. Joseph, Mo., Atchison, Leavenworth, West Line, Worland, Richards, Pittsburg and Joplin are common points with Kansas City in shipments moving over the Kansas City Southern Railway into Texarkana and Shreveport?

Plaintiff objects, incompetent, irrelevant and immaterial, calling for an opinion and conclusion of witness.

(No ruling.)

Witness excused.

190 C. V. FISHER, called as a witness on behalf of garnishee, being sworn, testified as follows:

Direct examination by Mr. CRANE:

Q. Your name is C. V. Fisher?

A. Yes sir.

Q. What is your age?

A. 36.

Q. Where do you live?

A. Kansas City.

Q. You are the C. V. Fisher, are you not, who has been spoken of in the testimony here as connected with Forrester Bros.?

A. Yes sir.

Q. In what way were you connected with Forrester Bros. in the fall of 1901?

A. I represented them in the west.

Q. You were interested in that,—in what was called a joint deal?

A. Yes sir.

Q. Just explain to the court what that was, what you mean by that?

A. It means that we had a guaranteed salary and a certain division of profits, if any.

Q. Now you say "we," to whom do you refer by that?

A. Mr. Catlin.

Q. And yourself?

A. Yes sir.

Q. In connection with that did you have any business with Mr. E. H. Schaufler who was the agent of the Northern Connecting lines?

A. Yes sir.

Q. What did you see him for, Mr. Fisher?

A. In regard to rates.

Q. Did he make you a rate from Omaha to Kansas City on shipments?

Plaintiff objects as calling for an opinion and conclusion of witness.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. You saw him about getting rates?

A. Yes sir.

191 Q. Where from?

A. From Omaha and Council Bluffs.

Q. Where to?

A. To Texarkana and Shreveport and Kansas City.

Q. Well, now you may state whether or not you got any rate from him from Omaha to Kansas City,—or I will change that question: If you got any rate from him from Omaha to Kansas City, you may state what it was?

Mr. COSTE: Let him give the conversation.

Court: Yes, calling for a conclusion of the witness.

Q. You saw him you say about getting rates to Kansas City and Texarkana, just tell what was said between you and Schaufler about a rate from Omaha to Kansas City?

Plaintiff objects: incompetent, irrelevant and immaterial.
(No ruling.)

Q. Just tell what arrangement you had with Schaufler for a rate on Forrester Bros. shipments from Omaha to Kansas City?

Plaintiff objects: calling for a conclusion of the witness.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. What Schaufler and I had a conversation about at that time?

Q. Yes, about the rate from Omaha to Kansas City on Forrester Bros. shipments.

A. I think I went over to Schaufler and ascertained what it would take to move stuff from there to Kansas City. I advised Mr. Forrester what it would take, and I was told to go ahead and work on that basis.

Q. You do not quote the conversation.

A. I think that is about all.

Q. How much of a rate did you tell him it would take from Omaha to Kansas City to work on?

Plaintiff objects: incompetent, irrelevant and immaterial.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. The rate was $4\frac{1}{2}$ cents a hundred.

192 Q. That was from Omaha to Kansas City?

A. Yes sir.

Q. Then tell the court whether or not you asked Schaufler, or had a talk with Schaufler about getting a rate on these shipments from Kansas City on to Texarkana, and if so what the conversation was?

A. I think I advised him on a basis of an 8 cent rate, out of Kansas City, which putting together this $4\frac{1}{2}$ cent rate from Omaha, it would make a through rate, would enable us to get into Texarkana and do business.

Q. In other words, as I understand your answer, you got a $4\frac{1}{2}$ cent rate from Schaufler to Kansas City, then you wanted Schaufler to see,—or had Schaufler see the Southern people?

Plaintiff objects to what was wanted and what was said.

(Question withdrawn.)

Q. State whether or not after you got the $4\frac{1}{2}$ cent rate from Omaha to Kansas City you had Mr. Schaufler do anything about getting an 8 cent rate from Kansas City,—or any rate from Kansas City to Texarkana on these Forrester Bros. shipments?

A. Yes sir.

Q. What did you have him do?

A. I requested him to see the Kansas City Southern people and see if they would be willing to put in that rate.

Q. You mean a rate of 8 cents from Kansas City to Texarkana?

A. Yes sir.

Q. Now you may tell the court, Mr. Fisher, whether or not you knew at that time that a rate on those shipments of 8 cents from Kansas City to Texarkana would be more or less than the proportional rate that was then in effect on the Kansas City Southern from Kansas City to Texarkana?

193 A. I do not know what rates were in effect at that time. I do not believe.

Q. You have testified in this case before?

A. Yes sir.

Q. Twice?

A. Yes sir.

Q. And I will ask you whether or not some of these matters have grown indistinct in your recollection?

A. They naturally would, Mr. Crane.

Q. I want to ask you whether or not you did not want to get,— or sent Schaufler to get a rate from Kansas City to Texarkana, less than the then tariff or open rate?

Plaintiff objects as incompetent, irrelevant and immaterial, assuming that there was a tariff rate from Kansas City south, and calling for an opinion and conclusion of the witness, and nothing stated as to what kind of tariff rate, a local rate or proportional rate over another road, or joint rate between these two roads.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. At the time you sent Schaufler down to get this rate, which you say was to be 8 cents, tell the court whether or not that rate was not less than the open or tariff rate then in force from Kansas City to Texarkana?

Plaintiff objects: Incompetent, irrelevant and immaterial, calling for an opinion and conclusion of the witness, and assuming that there was an open tariff rate from Kansas City to Texarkana, and the attention of witness isn't called to any particular kind of tariff rate.

Q. On shipments of this kind?

Court: He may answer if he knows.

To which ruling of the court Plaintiff at the time duly excepted and excepts.

A. I do not know what the tariff rate was, Mr. Crane.

Q. I will ask you whether you knew what it was or did not know what it was at that time, if you didn't send Schaufler for the purpose of getting a rate from Kansas City to Texarkana which was less than the then tariff rate, whatever it was?

194 Plaintiff objects: witness has already said he did not know what it was.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. I don't know what the tariff rate was.

Q. That doesn't answer my question, Mr. Fisher; whatever it was, you sent him down to get a less rate than that tariff rate?

Mr. COSTE: What tariff do you have reference to?

(Question withdrawn.)

Q. You sent him to get a rate from Kansas City to Texarkana to apply on these shipments of grain from Omaha and Council Bluffs and northern points that was less than the proportional tariff rate on such shipments, whether you knew what such tariff rate was or not?

Plaintiff objects: incompetent, irrelevant and immaterial, assuming that there was a proportional tariff rate of any kind, and assuming that this witness knew what the tariff rate was, and calling for an opinion and conclusion of the witness.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Mr. WAYDE: What he said to Mr. Schaufler or Mr. Schaufler to him possibly is competent, but what his mental idea of what he went for would be entirely incompetent.

A. I do not know as I remember what that tariff was or what rates were in existence, proportional rate or any rate, from Kansas City south at that time.

Q. You do not answer my question. I did not ask you what it was, what the tariff rate was. (Last above question repeated to witness.)

A. In the absence of my not knowing what it was, my request for an 8 cent rate,—I would not know whether I was coming in conflict with the tariff then in existence or not.

Q. I will ask you if on a previous trial of this case you did not say in answer to a question I asked you, "you did want a rate less than the tariff rate?" Answer "Yes sir."

195 Plaintiff objects, incompetent, irrelevant and immaterial, they can not cross examine their own witness.

Q. Didn't you have Schaufler go to the Kansas City Southern people for the express purpose of getting a rate from Kansas City to Texarkana on these shipments that you were making from Council Bluffs and up north, which would be less than the proportional rate then applying under the tariff as such shipments?

Plaintiff objects: incompetent, irrelevant and immaterial, calling for an opinion and conclusion of witness, and assuming there was a proportional tariff on such shipments, and being cross examination of their own witness.

Court: He may answer yes or no.

To which ruling of the court plaintiff at the time duly excepted and excepts.

A. As I said before, I do not know what rate was in existence, proportional rate or otherwise; I do not remember what rate was in existence, whether proportional or otherwise. I asked Mr. Schaufler to get me, if possible, an 8 cent rate, which added to my 4½ cent rate into Kansas City would give me a rate into Texarkana and Shreveport.

Q. They gave you an eight cent rate?

A. Yes sir.

Q. At that time how long had you been in the grain business?

Plaintiff objects: incompetent, irrelevant and immaterial.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. I think I had been in the grain business about 13 years at that time. No, it would be 11 years.

Q. You had had prior to that time a great deal of experience with the matter of rates, had you not?

Plaintiff objects, incompetent, irrelevant and immaterial.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. I had some experience, yes sir.

Q. Tell the court whether or not you knew at that time what was meant by "tariff rate"?

A. Yes sir.

196 Q. What was meant by "tariff rate" at that time?

Plaintiff objected: incompetent, irrelevant and immaterial. Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. You knew what they were at that time?

A. No, I did not.

Q. I do not mean what the particular amounts were, but you knew what was meant by "tariff rates"?

A. Yes sir.

Q. Tell the court whether or not it was necessary for you to send Mr. Schaufler, or anybody else, to Kansas City Southern Railway Company to get the proportional tariff rate from Kansas City to Texarkana that would apply on shipments made by you from Council Bluffs and Omaha and northern points going to southern points?

Plaintiff objects: incompetent, irrelevant and immaterial, calling for an opinion and conclusion of the witness.

Q. If you just sent your shipment down to Kansas City, and then your agent, the Kaw Grain & Elevator Company, billed it out south to Texarkana, it would take and get the proportional rate then in effect without sending Schaufler or anybody else there to do that, wouldn't it.

Plaintiff objects: incompetent, irrelevant and immaterial, calling for an opinion and conclusion of the witness, and assuming that the witness knows.

Objection sustained by the court as a cross examination. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. What I mean, Mr. Fisher, is you would not have to send anybody down there in order to get a proportional rate that was published in their tariff at that time?

Plaintiff objects: incompetent, irrelevant, immaterial, and calling for an opinion and conclusion of witness, and asking the witness to pass upon the very question this court has to pass upon. Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

197 A. No sir, I would not think it necessary.

Q. Didn't you send Schaufler, who is a railroad man, down to the Kansas City Southern people to get this 8 cent rate you spoke

of because he was a railroad man and you thought he could do more than a man that was not a railroad man?

Plaintiff objects: incompetent, irrelevant and immaterial, as to why he sent him there.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. Yes sir.

Q. And at that time when you sent him there you had already arranged with him as to what the rate would be from Omaha down to Kansas City?

Plaintiff objects: incompetent, irrelevant and immaterial, assuming.

Court: He has already testified to that, I think.

Q. You may not recollect right now, Mr. Fisher, just what the published tariff rates were from Omaha and Council Bluffs down to Kansas City, and from Kansas City to Texarkana, the proportional rate, but I will ask you whether or not you did not know at that time, in connection with your business as a grain dealer, what they were?

Plaintiff objects: incompetent, irrelevant and immaterial, assuming there was a published tariff rate on file with the Interstate Commerce Commission over the road, and between the roads over which this grain was shipped.

(No ruling.)

A. I may have known them into Kansas City, but I do not believe I knew them south.

Q. Do you remember whether that knowledge was in your mind when you testified in the first trial of this case?

Plaintiff objects: cross examination of their own witness.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

198 Q. You say that you do not recollect it now?

A. No sir, I do not.

Q. Did I understand you to say what the rate was from Omaha to Kansas City?

A. My memory was refreshed from hearing some of this testimony read—

Q. Do you now recollect what it was?

A. The Missouri Arbitrary was 6½ cents a hundred.

Q. What is the Missouri Arbitrary, as you call it?

A. A rate that would apply to business originating in that territory going beyond a certain point.

Q. It was a rate lower than the local rate from Omaha to Kansas City?

A. I believe so, yes sir.

Q. And it applied to business originating in that territory and going to Kansas City and then go on south?

Plaintiff objects: incompetent, irrelevant and immaterial.

A. Not necessarily south. Could go in any direction.

Q. That Trans-Missouri Arbitrary was at that time how much?

A. I think 6½ cents.

Q. Your rate with Schaufler from Omaha to Kansas City was 2 cents less than that?

Plaintiff objected.

(Question withdrawn.)

Q. You had your recollection refreshed this morning about these rates on shipments from Kansas City south to Texarkana points that was in force at that time; Now I want to see if I can refresh your recollection a little from your own testimony and ask you if you do not recollect that on the first trial of this case, that in answer to my question as follows: "And that was how much less,—taking your 4½ cent rate and 8 cent rate, making 12½ cent, how much less was that than the open published tariff rate from Omaha to southern points at that time?" Answer: "According to the tariff it was 4 cents, I think." Does that refresh your recollection any, so that you are able to state how much the open rate was at that time from Omaha to the southern points?

Plaintiff objects as incompetent, irrelevant and immaterial.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. I do not remember that question, Mr. Crane.

Q. Do you remember whether you made that answer or not?

A. I suppose I did if it is in my testimony.

Q. You say that has no effect to refresh your recollection at all?

A. No sir, it has not.

Q. Well, now Mr. Fisher, about when was it you sent Schaufler down to Kansas City to get that rate of 8 cents, as you said, from Kansas City to Texarkana?

A. I think it was in September, 1901.

Q. And you began making shipments then?

A. Yes sir.

Q. To the south?

A. Yes sir.

Q. Shipped right along through the balance of September, and the month of October?

A. Right along, yes sir.

Q. Well, during September and October did you get a rate of 8 cents from Kansas City south on those shipments?

A. Yes sir.

Q. You paid the shipments from Kansas City to the south, 10 cents a hundred pounds?

A. Whatever the expense bills show was paid, was paid; the freight bills I should say.

Q. Have you got any of those freight bills between September, the time this arrangement was made, and the first of November?

A. No sir, I have not.

199¼ Q. And during September and October, between this time and the first of November, you received back on some of

these shipments that were made, payments of money from the Kansas City Southern?

Plaintiff objects: assuming something not in evidence, not material to these issues in any event because there are no bills for October.

Q. I ask if during the month- of September and October there was not shipments made on which freight was paid from Kansas City to Texarkana and on which same shipments the Kansas City Southern paid back to you, or to Forrester Bros., the difference between any amount charged to them and an 8 cents per hundred pound rate?

Plaintiff objects unless it refers to Forrester Bros. shipments.

A. For Forrester Bros. is what you mean?

Q. Yes sir.

A. No sir, not for Forrester Bros.

Q. Not for Forrester Bros.?

A. No sir.

Q. Then, as I understand, you made some individual shipments on this 8 cent rate, which you say was given from Kansas City to the south?

Plaintiff objects: incompetent, irrelevant and immaterial.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. Yes sir.

Q. Did you make up any of these claims that were sent in, Mr. Fisher?

A. What claims? Yes, sir, to the Kansas City Southern?

Q. Yes.

A. Yes sir.

Q. Have you got any here that you made up?

A. Where are they, I—

Q. I have not seen them at all.

A. Yes, had them here yesterday.

Q. We had some expense bills.

A. You had the claims, too.

Q. I never seen them.

A. That is what you mean, isn't it?

Q. No, what I am getting at is this; you know what a 199½ statement of a claim is?

A. Yes sir.

Q. These are simply, as you have shown here, an enumeration of the expense bills.

A. That is the claim right there.

Q. Did you get this up?

A. I got part of it up, yes sir.

Q. This thing here is simply, as I understand it, a synopsis of the expense bills.

A. Yes, that is it.

Q. And whatever was gotten up, you sent in to Mr. Schaufler in the first instance?

A. Yes sir.

Q. How long after this matter along in September when you sent Schaufler down to see the Kansas City Southern people to get this 8 cent rate you speak of, how long after that was it before you saw any of the Kansas City Southern people in connection with the matter?

A. Possibly along in November, along in November, I think.

Q. Possibly along in November?

A. Yes sir.

Q. That was after they ceased making you a rate of 8 cents from Kansas City south?

A. That was when the bills began to come otherwise than the arrangement, as I understand it.

Q. That is what I mean, after you ceased getting the 8 cent rate?

A. Yes sir.

Q. They cut off the 8 cent rate of the 31st day of October, did they not?

A. I don't remember; I don't remember when the expense started to come back, you understand.

Q. The expense began to come shortly after the last of October?

A. Yes sir.

Q. And you know that after the first of November 1901 you did not get any more 8 cent rate from Kansas City to southern points?

200 Plaintiff objects: calling for a conclusion of the witness. Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. No sir. I can answer it that we was charged more than 8 cents.

Q. You did not get any more 8 cent rate, did you?

A. No sir.

Q. You did the buying of this grain that was shipped down there?

A. Yes sir.

Q. And at what points did you turn it over to the Northern connecting lines?

A. At Council Bluffs.

Q. At Council Bluffs?

A. Yes sir.

Q. Who attended up at that line as to making or having issued bills of lading on those shipments?

A. Bills of lading would originate outside of Omaha and Council Bluffs.

Q. Explain why?

A. The grain mostly originated at points in Iowa and Nebraska beyond Council Bluffs.

Q. Beyond Council Bluffs?

A. Yes, they all originated east of the Missouri River.

Q. Did you buy it from various grain dealers and wherever you could find it?

A. Yes sir.

Q. Can you tell the court why it was that a large part of it came from these points outside of Council Bluffs and around here was billed through to Kansas City?

A. I don't understand that it was.

Q. Assuming for the present that Mr. Moore's testimony is correct, that it was way-billed through to Kansas City who did that way-billing in the first instance?

A. The agent of the intersecting line.

Q. As to that that came into Council Bluffs and was rebilled from there, who did that?

A. It was not rebilled from there south.

Q. There was no rebilling then from Council Bluffs south?

201 A. Not that I knew of. No, I do not believe there was, with the exception of one; there might have been a little, but I am not sure whether that was rebilled from there or not.

Q. Now, Mr. Fisher, if a shipment was billed from Omaha or Council Bluffs right through to Texarkana, billed clear down there, that kind of billing, there would be no necessity or occasion for issuing a new bill of lading in Kansas City?

Plaintiff objects as incompetent, irrelevant and immaterial.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. I do not see any necessity for it, no sir,

Q. This Kaw Grain & Elevator Company, did you secure their services at Kansas City?

A. Did I personally?

Q. Yes.

A. I do not believe so, no sir.

Q. You did not have any dealings with them directly?

A. I believe Mr. Catlin secured their services.

Q. Did you up north there have this grain in controversy here, that Forrester Bros. were interested in, billed to the Kaw Grain & Elevator Co. at Kansas City?

A. No sir.

Q. Who did that?

A. Nobody, it was not billed to the Kaw Grain & Elevator Co.

Q. Billed to Forrester Bros. there?

A. Shipped there notify Forrester Bros.

Q. And it was billed into Kansas City that way?

A. Not to Kansas City, Mr. Crane.

Q. Have you got any billing whatever where it was billed otherwise?

A. It was all billed Texakana.

Q. Did you see any of that billing?

202 A. The billing, no, I did not see any of the billing.

Q. You did not see any of the billing?

A. No sir.

Q. How would the Kaw Co., if it was billed straight through to Texarkana, shipped there notify Forrester Bros., Texarkana, how would the Kaw Co. get these cars and get the billings at Kansas City?

A. The grain would be held at Kansas City for inspection.

Q. And these bills of lading would be sent to the Kaw Co. there?

A. Yes sir.

Q. And then the Kaw Co. could get new bills of lading on to Texarkana?

A. Yes sir.

Q. And you know from these expense bills that were in evidence here, do you not, that they were all on shipments which were re-billed from Kansas City and went south?

A. I believe they are.

Q. You know that from your experience?

A. Yes sir, they are.

By the COURT:

Q. You speak of these bills here as expense bills, what are they?

A. I think I qualified that by saying, when I said expense bills, I said freight bills, because it is one and the same thing.

Q. You speak of the expense bills not coming back until a certain time. As long as they went through on that 8 cent rate they did not come back at all?

A. I did not say that.

Q. And when the charges were over that they were sent back to you?

A. Sent to the house at St. Louis, Forrester Bros., and then they sent them to me.

Q. They went to them any way, whether they were paid at 8 cents or not?

A. Yes sir.

Q. Now in what shape were these claims presented to the railroad company?

203 A. Just as shown there.

Q. Take the original bill?

A. Yes sir, and attach it to your claim?

Q. And your claim was the difference in the rate?

A. Yes sir.

Q. On each car sent?

A. That claim there is supposed to be practically a copy of the bills of lading, giving the way-bill number and everything for reference of the railroad company.

Q. As a matter of convenience?

A. Yes sir.

MR. CRANE: Now so it can clearly appear in the record, we offer to prove by this witness that he wanted to get a rate from Kansas City to Texarkana, Texas, and those southern points, on these Forrester Bros. Shipments, originating in the north at the points he has told about, less than the then open proportional tariff rate that would apply on such shipments, and that he sent Mr. Schauler

to Kansas City for the express purpose of getting such lesser rate, and that Schaufler went at his request.

Mr. COSTE: Plaintiff submits that the witness is still on the witness stand, and the counsel of the garnishee has the right to ask the witness any question that he sees fit and that is a competent question; and that statement of counsel was made for the purpose of influencing the court, and not for the purpose of asking a proper question.

By Mr. CRANE:

Q. When you sent Schaufler to Kansas City to get this rate that you speak of, of 8 cents from Kansas City to Texarkana, to apply on these shipments, you sent him to get a rate that was less than the then open published tariff rate, didn't you?

Plaintiff objects: Already having been answered, and calling for an opinion and conclusion of witness, and assuming that there was an open published tariff rate at that time, and witness has stated what he said to Mr. Schaufler, and shown his purpose.

Q. When you sent Schaufler to Kansas City what did you say to him to say to the Kansas City Southern people, if anything?

A. I just told Schaufler on a basis of an 8 cent rate from Kansas City to Texarkana we could do some business.

204 Q. That was your words?

A. Yes sir, something like that.

Q. Did you say for him to go to the Kansas City Southern people and see if he could get it?

A. I asked him to go there probably.

Q. And see if he could get that rate?

A. Yes sir.

Q. Did he tell you when he was going or what time, or anything of that sort?

A. I don't believe he did. He probably went right away.

Q. And at that time you didn't take an occasion to investigate the tariff or see what they were, or anything of that sort?

A. No sir.

Q. How long after that was it before you saw Schaufler again?

A. I do not remember.

Q. And did he report back to you that he had succeeded in getting the 8 cent rate from Kansas City to the south?

A. Yes sir.

Q. Said the Kansas City Southern had accepted it?

A. Yes sir.

Cross-examination by Mr. COSTE:

Q. When you first went to see Mr. Schaufler about this grain for Forrester Bros., I will ask you whether part of this grain was intended to be shipped to Kansas City, straight there for sale, and whether part of the grain was to go on beyond Kansas City to southern points.

Garnishee objects: what the intention was could have no binding effect or be material in the controversy.

(Question withdrawn.)

Q. Did you say to Mr. Schaufler that you had some grain to be shipped for Forrester Bros. from Omaha and those points about there to Kansas City, and which had Kansas City as a destination,
205 and other grain which was to go right through from above to southern points, such as Texarkana and Shreveport?

Garnishee objects: incompetent, irrelevant and immaterial, not binding in any way upon this garnishee unless notice and knowledge was brought home to them.

Objection overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

A. Yes sir.

Q. Now as to the shipments that were to go through from the northern points that I have mentioned to the southern points, I will ask you whether you asked Mr. Schaufler what his own road could do with reference to a through shipment of that grain on its part of the haul?

A. Well, yes sir.

Q. Well, did he answer you that question?

A. Yes sir.

Q. When he had done that did you ask him to do anything for you on those same through shipments with the Kansas City Southern people as to their part of the haul?

A. Yes sir.

Q. When you suggested to Mr. Schaufler, as you said you did, that if they would make,—that is the Kansas City Southern Railroad,—their charge for their part of that through haul 8 cents that you could do some business, it was understood between you and Mr. Schaufler, wasn't it, that that 8 cent rate was to apply to those through shipments from Omaha to Texarkana?

Garnishee objects as to the understanding between him and Schaufler as not binding on this garnishee, and being wholly incompetent, irrelevant and immaterial, and calling for an opinion and conclusion.

Objection overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

A. Yes sir.

Q. I will ask you now whether there were any shipments at that time outside of those through shipments from Omaha down
206 to Texarkana and Shreveport, about which you inquired for an 8 cent rate from Kansas City on the Kansas City Southern?

A. They were all that way.

Q. There was no other than those through shipments that you wanted that 8 cent rate for, was there?

A. No sir.

Q. Mr. Fisher, at that time did you know of any established inter-

state commerce tariff for a through rate between Omaha and Texarkana, and common points at both termini, of the Northern connecting lines and the Kansas City Southern?

A. No sir.

By Mr. CRANE:

Q. You say you did not know of any?

WITNESS: No, sir, I did not know of any.

Q. You were asked by Mr. Crane whether it was necessary to send Mr. Schaufler down to the Kansas City Southern Railway Company to find out what proportional tariff might apply to shipments at Kansas City that would come there from the North, or elsewhere, and you said "no."

Mr. CRANE: That is not the question.

Q. (Cont.) Now I will ask you if you were at that time inquiring of Mr. Schaufler as to a through rate that you could get over these two roads from Omaha to Texarkana?

Garnishee objects to what conversation passed between this witness and Schaufler which wasn't communicated to the garnishee in the case.

Q. I will ask you whether you know whether in making a through rate between two or more railroads that matter must necessarily be agreed upon by the railroads in the first instance?

A. Yes sir.

Q. Now if it was a through rate that you wanted to make up in that way, by finding out what the Northern Connecting lines could do toward it, and what the Kansas City Southern could do toward it, it was necessary to send Mr. Schaufler down there and find
207 out what the Kansas City Southern would do for its part, wouldn't it?

Garnishee objects: assuming the witness has testified anything of that kind; assuming that there was any sending of him to get a through rate.

Objection overruled by the court. To which ruling of the court Garnishee at the time duly excepted and excepts.

A. No sir. In his official capacity, of course it would be necessary for him to go to the Kansas City Southern and see what they would do.

Q. It would be necessary?

A. Yes sir, I would think so, as he was an official.

Q. Is it usual, so far as your experience goes, for railroads when they make a through rate to charge less than the sum of their local rates in such through rate?

Garnishee objects: Incompetent, irrelevant and immaterial, not cross examination.

Objection sustained by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. You said in answer to Mr. Crane's question, that shipments

were made on account of Forrester Bros., that is some of these through shipments to Texarkana, right after September, when you claim this rate was given you. Now do you know of any shipments in October, Mr. Fisher, that is, up to the end of October, that were made and upon which freight bills were presented and paid at 10 cent rate?

A. Yes sir.

Q. And those still remain unsettled, do they?

A. Yes sir.

Q. Do you know how many of those there are?

Garnishee objects: calling for the contents of a written instrument.

A. I think there are 7.

Q. Now, Mr. Fisher, can you tell us of this lot of grain that was to go by through shipments from above,—from Omaha and common points to Texarkana and common points, how many cars
208 were moved between September, when you say this rate was given you, and the end of October, or about how many?

A. Well, I really do not know how many there were.

Q. Were there very many, or not very many?

A. I do not believe I can say.

Q. Were there as many as 25?

A. There ought to be 25, I should think.

Q. I am trying to get somewhere near it; were there as many as
50?

A. I do not know. I can not say.

Q. You could not say whether there was over or under 50?

A. No sir.

Q. You paid none — these expense bills yourself?

A. No sir.

Q. Who paid those so far as you know?

A. The Kaw Grain & Elevator Co.

Q. They paid all of those as the agent of Forrester Bros. for that purpose?

A. Yes sir.

Q. When you say that they were their financial agents, were they to handle this business at Kansas City?

A. Yes sir.

Q. Was there any delay in this matter, in shipping this stuff down there, Mr. Fisher?

A. We could not get the cars.

Q. During what months did that continue?

A. I think it continued up until the first of the year.

Q. Right from the start?

A. Yes sir, or shortly after.

Q. Was the result of that that you closed matters much later than you had anticipated?

A. Yes sir.

Q. I will ask you whether some of these shipments that were intended to go through, and billed through, were not on account of this delay stopped at Kansas City and sold there?

A. I believe they were.

209 Q. Now you heard Mr. Schaufler testify in regard to furnishing cars, and he said in the first instance nothing was said except that a considerable lot of grain could be moved. Do you remember about making a requisition or ordering cars afterward?

A. Yes sir.

Q. How soon after the first conversation with reference to through rates did you make a requisition?

A. I think along in October sometime I asked him for empties.

Q. How long after the original conversation?

A. It might have been two weeks.

Q. Then for those two weeks after the rate matter was discussed and settled between you no shipments were made?

A. I do not know whether there were or not.

Q. What did you tell Mr. Schaufler with reference to the cars you wanted?

Garnishee objects as having no bearing on the garnishee unless it was communicated to us, and not proper cross examination, no such matter being asked on direct examination.

(Question withdrawn.)

Q. In the original billing of this grain from the points where you bought it, did you give any instructions to any body as to the manner of billing, Mr. Fisher?

Garnishee objects: incompetent, irrelevant and immaterial, unless those instructions were conveyed to us and we had knowledge of them.

Objection overruled by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

A. I think the business was——

Q. Did you give any instructions?

A. Yes sir.

Q. State to whom you gave those instructions and what they were, as to what billing was to be done, the way it was to be billed.

A. I gave it to parties I bought the grain from.

Q. What did you say to them, as to how it should be billed?

A. I said "bill to Texarkana, via Kansas City, stop at Kansas City to inspect."

210 Redirect examination by Mr. CRANE:

Q. Whether those instructions were carried out or not, you have no way of knowing?

A. No sir.

Q. In this joint deal that you were in with Forrester Bros., they furnished the money, didn't they?

A. Yes sir.

Q. And you and Mr. Catlin both had a guaranteed salary?

A. Yes sir.

Q. And you shared in the profits and losses?

A. Yes sir.

Q. Now, in connection with that deal you went to this man Schaulfer, who was the agent of the Northern Connecting lines?

A. Yes sir.

Q. The purpose in doing that was to get him to get a rate for you?

A. Yes sir.

Q. You did not ask him to get you a rate from Omaha, but you did get him to get you a rate from Kansas City to Texarkana and Shreveport?

A. It would make a through rate.

Q. I am not asking for your deduction, I am asking you the question, you did ask him to get the rate from Kansas City to Texarkana and Shreveport?

Plaintiff objects to the form of the question.

Q. I will ask you if you did not ask him to get you a rate from Kansas City to Texarkana and Shreveport?

Plaintiff objects as leading and suggestive, and cross examination of their own witness.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. Yes sir.

Q. And it was also true, isn't it Mr. Fisher, that you did not ask him to get you a rate from Omaha?

A. I already had the rate from Omaha.

Recross-examination by Mr. COSTE:

211 Q. But in inquiring about these two rates, what you were after was to connect the two, making a through rate for the shipments, isn't that a fact?

A. Yes sir.

Q. And only in that sense and no other, did you make that answer?

A. It gave me my through rate, yes sir.

Q. You stated first, in answer to a question of Mr. Crane's that in your arrangement with Forrester Bros. you was to get a guaranteed salary and share of the profits, if any, is that correct?

A. Yes sir.

Q. Were you liable under your arrangement with Forrester Bros. for the purchase price of this grain, or other liability that they assumed of that sort?

Garnishee objects: it is a question of law calling for this witness to pass on.

Objection sustained by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. Was it agreed between you and Forrester Bros. that in the purchase of this grain, and other matters of expenditure, you should pay a part?

A. No.

Q. Who did that?

A. Forrester Bros.

Q. That is Robert L. Forrester and Joseph M. Forrester?

A. Yes sir.

Q. Was there any other member in that firm except those two people, so far as you know?

Garnishee objects: calling for a conclusion of the witness.

Objection sustained by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. What was said between you with reference to,—as to who were partners and who not, and who were to be partners and who not?

A. I don't suppose there is any question as to who was the partners.

Mr. CRANE: Just state what you and Forrester Bros. said.

212 A. (Cont.) A joint account basis, and they was to give us a guaranteed salary, and if any profits accrued after losses had been adjusted, Catlin and I would come in.

Q. In the purchase of this grain did you pay any part of the purchase price, or make yourself liable by promising to pay any part of it?

A. No sir.

Q. You simply acted as agent for Forrester Bros. and saw that it moved forward to destination?

A. Yes sir.

Q. For their account?

A. Yes sir.

Redirect examination by Mr. CRANE:

Q. Putting together the rate you had already gotten of $4\frac{1}{2}$ cents, and the rate you got him to get from Kansas City to the south, would make a total rate of $12\frac{1}{2}$ cents.

Plaintiff objects: it is a matter of mathematics.

Q. That is what I mean, that is what you refer to as the through rate?

Plaintiff objects: incompetent, irrelevant and immaterial.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. Yes sir.

Witness excused.

213 Garnishee now offers in evidence the testimony of E. E. Smythe, taken at a former trial of this case, and transcribed by the official stenographer as follows, to-wit:

E. E. SMYTHE, called as a witness on behalf of the Garnishee, being first duly sworn, testified as follows:

Direct examination by Mr. MOORE:

Q. You live in Kansas City do you?

A. Yes sir.

Q. What is your position with the Kansas City Southern Railway Company?

A. General Freight Agent.

Q. How long have you been connected with the Kansas City Southern?

A. With the Kansas City Southern,—Kansas City, Pittsburg & Gulf,—I call them one line now, I have been with them about six years,—six years in June.

Q. At the time of those transactions what position did you then occupy?

A. General Freight Agent, Kansas City Southern.

Q. What position did Mr. Hanley occupy?

A. Freight Traffic Manager.

Q. You are acquainted with Mr. Schaufler?

A. Yes sir.

Q. Do you know whether or not Mr. Hanley and Mr. Schaufler were well acquainted with each other, and intimate?

A. Yes sir.

Q. I will ask you with reference to the matter of tariffs, who makes the tariffs, that is, whether the Railroad Companies themselves or some other authorities?

Plaintiff objected.

(Not answered.)

Q. Mr. Smythe, you may state who makes tariffs, that is, who gets up the paper of tariffs, and who makes the changes in the tariffs that occur from time to time?

A. The tariff department of the different roads.

214 Q. I will ask you to state what, if anything, you do with these tariffs after they are printed, with reference to filing copies with the Interstate Commerce Commission or with the agents along the line?

Plaintiff objected.

Q. What have you done? What has been the practice? You may state what you did?

(Question withdrawn.)

Q. I will ask you to look at Ex. E attached to stipulation filed this morning, and state what that is; whether or not that is a tariff, or an amendment to a tariff, or what it is? (Ex. E here mentioned is marked Ex. H in this case-made.)

A. This is an amendment to Interstate Commerce Commission tariff 911, showing the proportionate rates on grain and grain products from Kansas City, Atchison, Leavenworth, St. Joseph, to Texarkana, and Shreveport, making a rate on grain and articles taking the same rate to the points mentioned of 10 cents per hundred pounds, effective July 13, 1901.

Q. Referring to the same exhibit you may state where that was made?

A. It was made in our office at Kansas City.

Q. By whom was it made?

A. By my office, yes sir.

Q. Can you say when it was made?

A. Yes sir. It was made in July, 1901.

Q. For what purpose was it made?

(Not answered.)

Q. Now how many of those *mere* made at the same time that was made?

Plaintiff objects: assuming witness knows.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. How many tariffs were made? 500 of them.

215 Q. You may state whether or not they were all copies one of the other?

A. Absolute productions.

Q. I will ask you to state what was done with these 500 copies?

A. We first mailed to the Interstate Commerce Commission their copy; we then sent to all agents that would have need for these tariffs, or to the points between which they applied, for their files, and for the fixing of their charges on such shipments as per this tariff.

Q. You say you sent copies to the Interstate Commerce Commission?

A. Yes sir.

Q. I will ask you to look at the letter attached to stipulation marked Ex. D (the same being marked Ex. G in this case-made) and state whether or not that is the letter transmitting these tariffs to the Interstate Commerce Commission at Washington, D. C.?

A. That is the original letter, yes sir.

Q. I will ask you to look at this statement here, purporting to be a statement of the Interstate Commerce Commission, July 13, 1901, and state what it is?

(Not answered.)

Q. What, if you know, is the custom or practice of the Interstate Commerce Commission with reference to acknowledging receipt of tariffs sent to them?

(Not answered.)

Q. Have you got the tariff here which precedes the one of July 1901?

A. I think that is an amendment. I think it is in here. I am not quite certain.

Q. Mr. Smythe, what is meant in railroading by "common points"?

Plaintiff objects: incompetent, irrelevant and immaterial, and for the further reason, it assumes that the witness knows and he has not shown himself qualified to answer the question.

216 Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. Common points are points which take the same rate. For instance, the rate to nearly all territories from Atchison, Leavenworth and St. Joe are the same. That tariff of ours is applicable from Kansas City.

Q. Common points are comparatively close together, taking the same rates?

Plaintiff objects for the reasons stated above to the preceding question.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. Yes sir.

Q. I will ask you to state whether or not Kansas City, St. Joe, Leavenworth and Atchison are common points?

(Not answered.)

Q. How far north is Omaha from Kansas City?

A. 220 or 226 miles, about. It is within 200 to 226 miles, I think the distance by the Kansas City Northern Connecting, the O. & St. L. 226, and by the Burlington about 206.

Q. How far north from Kansas City is Atchison and Leavenworth?

A. Between 30 and 40 miles.

Q. And St. Joe about 60 miles north of Kansas City?

A. Yes sir, 60.

Q. Is Omaha a common point with Leavenworth, Atchison, St. Joe and Kansas City?

A. No sir.

Q. I will ask you to tell the court and jury whether Texarkana, Shreveport, Monroe, Alexandria and Baton Rouge,—whether or not they are common points?

(Not answered.)

217 Q. Do you know whether or not they are?

A. Texarkana and Shreveport—

A. Answer yes or no. You may state whether or not you know whether these cities I have named are common points?

A. They are.

Q. Do you know?

A. I do.

Q. Now I will ask you whether they are or not?

(Not answered.)

Q. I will ask you to state if you know, what the rate was in 1901 on grain between Omaha and Kansas City?

A. Yes sir.

Q. I will ask you to state what it was?

A. The rate was 9 cents.

Q. Is that what you call a legal rate?

A. It was the legal rate, yes sir.

Q. That is, between Omaha and Kansas City?

A. Yes sir.

Q. On what roads was that in effect?

A. In effect over the Burlington, Mo. Pac. and all lines reaching Omaha running into Kansas City.

Q. That being the regular legal rate I will ask you to state whether or not there was what you call an arbitrary?

A. Yes sir.

Q. What do you mean by an arbitrary between Omaha and Kansas City?

Plaintiff objects: incompetent, irrelevant and immaterial, and assuming something.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. On business from Omaha to Kansas City when the shipments were going beyond the arbitrary sheet that you have
218 before you, all lines could accept that business beyond at 6½ cents per hundred,—it has been in effect for years,—and carry it under that arbitrary sheet.

Q. I will ask you if this is the arbitrary sheet which you have reference to in your testimony?

Plaintiff objects: incompetent, irrelevant and immaterial, and the arbitrary sheet itself is the best evidence.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. That is the arbitrary sheet. That is the arbitrary. (Referring to page check marked at top.)

Q. Will you read that part of the arbitrary sheet which you have identified as giving the arbitrary on corn and corn products between Omaha and Kansas City?

(Not answered.)

Q. Will you examine that and tell the court, Mr. Smythe, whether or not this arbitrary applies between Omaha and Kansas City alone, or between Omaha and Kansas City and common points?

(Not answered.)

Q. I will ask you to state what was the rate in 1901 from Omaha to Leavenworth?

A. Same as to Kansas City.

Q. I will ask you to state whether or not this arbitrary No. 1-D, which you have already identified, and which I will have marked Ex. B for identification, I will ask you to state by whom that is issued?

(Not answered.)

Q. Do you know by whom this arbitrary sheet No. 1-D is published?

A. Yes sir.

Q. By whom?

A. Mr. W. A. Poteet. He is the secretary of the lines shown on the face of that tariff or arbitrary sheet.

219 Q. Do you know whether this arbitrary sheet, No. 1-D, Ex. X 3, is used and acted upon by the various railroad companies whose names appear on the face of the arbitrary?

(Question withdrawn.)

Q. I will ask you to state whether or not this arbitrary sheet No. 1-D, Ex. X 3, is acted upon and has been acted upon by the various railroad companies whose names appear upon the sheet, for a number of years?

(Question withdrawn.)

Q. Now Mr. Smythe I will ask you to state what is known in rail-roading as "proportional rates", what does that expression mean, if it has any fixed or definite meaning?

Plaintiff objects: incompetent, irrelevant and immaterial, and for the further reason the witness has not shown himself qualified to answer the question, and calling for an opinion and conclusion.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. Proportionate rates are rates established on a great many centers—grain centers if you please—or grain coming from any territory which may be shipped there for re-shipment, renewal, switching, and elevators, or anything that the grain men might have to do with the grain; it makes it, the market makes it a basis point. The custom has been in vogue ever since I have been railroading.

Q. I will ask you what you mean by proportionate rates south, as applied to Kansas City.

(Question withdrawn.)

Q. I will ask you if the words "proportionate rates" have a fixed and definite meaning among railroad men, especially among traffic men?

Plaintiff objects: incompetent, irrelevant and immaterial, and further, he has not shown that he knows.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

220 A. Yes sir.

Q. Calling your attention to Ex. E (same being Ex. H in this case-made) attached to stipulation, I will ask you if the expression "proportionate rates" applied on grain etc. has any definite, fixed, and technical meaning in railroad business?

(Question withdrawn.)

Q. You may state if the expression "proportionate rates applying on grain and grain products, hay and straw, car-loads, from Kansas City, St. Jo, Mo., Atchison & Leavenworth, Kansas, to points taking the same rates in tariff, to Texarkana, Shreveport, Alexandria, New Orleans, Lake Charles, West Lake, La., Vicksburg, Jackson and Meridian, Miss." has any fixed definite and technical meaning among railroad men?

Plaintiff objects: incompetent, irrelevant and immaterial, does not tend to prove or disprove any of the issues in this case, calling for a conclusion, and it is not shown that he is qualified to answer.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. Most assuredly has. They are understood.

Q. Now I will ask you to state what that means.

Plaintiff objects, for reasons above stated.

Objection overruled by the court. To which rulings of the court plaintiff at the time duly excepted and excepts.

A. Proportionate rates as applied, I might say, to anything,

has the same meaning, has the same understanding, between all handlers of those commodities, all the railroads. It means that any commodity might be shipped in to a point where the tariffs apply, you might say, or new shipment. And new bills of lading are attached showing that they originated up the road under a proportionate rate as indicated by the tariffs would apply to the points of destination, as shown by these tariffs.

221 Q. Can you give us an illustration so we will understand it more definitely? Give your own illustration of shipments coming into Kansas City and going out again.

Plaintiff objects: incompetent, irrelevant and immaterial, former objections having been sustained there is now nothing to base this question on, and further, witness has not shown himself qualified to answer.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. We will take Wichita, Kansas. Some Kansas City firm will buy hay and grain there from a Wichita dealer, or some point in that territory, and ship that hay to Kansas City to John Jones Commission Co. Mr. Jones pays the freight on that car, and in the meantime,—a month afterwards, or two months,—he may have sold that car of hay or grain to go to New Orleans, and that car would be ordered out of the elevator to some road for shipment, and he accordingly comes to you, or presents to the General Agent the expense bill covering the freight in, and when that is checked to see that the correct rate is applied it goes out on a proportionate rate from Kansas City or any other point where the proportionate rate applies, at the proportionate rate named in this tariff.

Q. If the car as you say in your illustration, originates at Wichita and goes to Kansas City over the Santa Fe, would it be necessary in order that the shipper should have the benefit of that proportionate rate or tariff of the Southern, to mention the Santa Fe upon the tariff as being a party to the tariff?

(Question withdrawn.)

Q. Will you explain to the court and jury what force there is in this statement upon the tariff in connection with the Chicago
222 *Grand Western Ry. Co. Kansas City, St. Joe & Council Bluffs Railroad, and the Mo. Pac. Ry. Co. and the St. Joseph & Grand Island Railway?*

(No answer.)

Q. Explain in your own way?

A. You want me to explain what that tariff means? What it would apply on?

Q. Yes sir, just explain the meaning of this expression "in connection with the Chicago & Western" and the other roads?

A. That tariff would apply on grain coming into Kansas City on any railroad in America to Texarkana and Shreveport, and our books will show that there is——

Q. You say it would apply on grain coming into Kansas City from any point in the world?

A. Yes sir, any place in America.

Q. Go ahead.

Plaintiff objects: same reasons as above, incompetent, irrelevant and immaterial, and assuming that the witness knows, asking the witness to explain the contents of a written instrument and vary its terms by parole testimony.

Objection overruled by the court. Ruling of the court is by the plaintiff duly excepted to.

A. The proportionate rate as applied in that tariff or any other would mean that the grain coming into any of these points upon which the freight had been paid at Kansas City, or Atchison, or Leavenworth, or St. Joseph and reshipped out of these points would be the figures provided in that tariff, no matter where it originated.

Q. What I want to get at is this, coming to the thing in a nutshell,—The Judge wants to know why the Northern lines, the Omaha & St. L. is not mentioned in this tariff, and what the facts are in connection with the Missouri Pacific and the other four lines?

(Question withdrawn.)

223 Q. I will ask you to state what is the meaning of the language upon that sheet that you have in your hand, in connection with the Missouri Pacific and other roads? What does that mean?

Plaintiff objects: incompetent, irrelevant and immaterial, assuming that the witness knows, and calling for an opinion and conclusion.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. It means that grain coming out of St. Joe going to Texarkana which might start out of these points over any of the four roads mentioned in connection with the Kansas City Southern would pay 10 cents a hundred from St. Joe, Atchison, Kansas City or Leavenworth. I do not see how I can make it any plainer.

Q. Well, tell the jury why it is that the Omaha and St. Louis road is not mentioned on that tariff?

(Question withdrawn.)

Q. You did prepare it didn't you Mr. Smythe?

A. Under my direction, yes sir.

Q. If it was prepared under your direction I will ask you to state what the reason was, if any, that the Omaha & St. Louis, Omaha, Kansas City & Eastern, and the Northern Connecting lines were not parties to this tariff and not mentioned in it?

(Not answered.)

Q. You may state whether or not Omaha is a common basis point with Kansas City?

A. No sir.

Q. Referring to Exhibit C attached to the stipulation between the parties, I will ask you to state, if you know, who made Ex. C. (same being Ex. F in this case-made),—where it was prepared and printed?

A. It was made in my office and under my direction.

Q. Can you state when it was made?

A. Yes sir.

224 Mr. WAYDE: Did you make that yourself?

A. No sir.

Q. Did you see it made and know it was made at the time?

A. I certainly did know it was made.

Mr. WAYDE: Were you present when it was made?

A. I didn't stand over the man all the time, no sir.

Q. I will ask you to state whether or not you saw the tariff and examined it before it was sent to the Interstate Commerce Commission?

A. The proof sheet always comes for an O. K.

Q. Was the proof sheet brought to you?

A. On this particular memorandum I can not recollect.

Q. I will ask you to state whether or not you saw that particular amendment before it was sent to the Interstate Commerce Commission, and whether you knew it was correct before it went to the Interstate Commerce Commission?

A. It was authorized—it goes to the man after the figures are made up,—they go to the chief rate clerk and they check those back, and if I am in the office they come to me for verification, or assistant officer for verification.

Q. I will ask you to state whether or not that particular tariff I called your attention to was made under your supervision?

A. It was made by my direction.

Q. It was made by your direction?

A. Yes sir.

Q. Can you tell from the date of the letter attached to it by whom that particular tariff was sent to the Interstate Commerce Commission and when it was sent?

A. Yes sir.

Q. Now I will ask you to state when this tariff, Ex. C (being Ex. F in this case-made) became effective, so far as grain shipments, were concerned, between Kansas City and Shreveport?
225 (Not answered.)

Q. Was the interstate Commerce — notified of that tariff by wire or otherwise?

A. Yes sir.

Q. Have you got the telegram here?

A. I have.

Mr. CRANE: The telegram is already in evidence.

Q. First I will ask you if the words "J A X," the first word on the telegram, has any meaning? Is that a code word, or anything of that kind?

A. No sir, it doesn't mean anything about the rates whatever.

Q. Now that states "effective Nov. 10, a rate of 14¢ will be put in From Kansas City, a hundred pounds to Texarkana and Shreveport," what do you mean?

(Not answered.)

Q. Now Mr. Smythe, after Amendment No. 7, which I have just

read, issued Oct. 31, 1901, I will ask you to state whether or not there was any other amendments or change in the rate issued or filed with the Interstate Commerce Commission during the pendency of these shipments?

Plaintiff objects: incompetent, irrelevant and immaterial, the instrument itself is the best evidence; calling for an opinion and conclusion of the witness, and further, the witness has not shown himself qualified to answer.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. You mean between July 10—No sir, this one issued Oct. 31, 1901, was the next one issued after that on grain and grain products.

Q. In other words: How long did that 14 cent rate continue in effect?

A. It is in effect to-day.

Q. After Oct. 31, 1901, when was the next amendment made or change in the tariff, if there was any?

226 A. There has been no change in the rate on grain since that time.

Q. Has here been any amendment sent to the Interstate Commerce Commission since that time?

A. Amendments to the tariff on other commodities to other points.

Q. I mean on grain and grain products?

A. Not between these points: no change of rate. There has been an advance on wheat and flour but not on corn.

Q. Take the tariff that was issued in July 1901, I will ask you if there was any tariff issued and filed with the Interstate Commerce Commission between July 13 1901, and October 31, 1901, the date of the next tariff you produce?

Plaintiff objects: incompetent, irrelevant and immaterial; witness has not shown himself qualified to answer, and the tariff itself, if there was any filed, would be the best evidence.

Objection overruled by the court. To which ruling of the court plaintiff at the time excepted and excepts.

A. No sir, not on grain or grain products to Texarkana.

Q. I believe you said when these amendments were filed with the Interstate Commerce Commission, at the same time they were sent out to the agents of the Company to post them?

A. Yes sir.

Cross-examination by J. M. WAYDE, Esq.:

Q. You didn't post any of these notices up yourself?

A. Not in the stations along the line, no sir.

Q. You were not present when any of them were posted up?

A. No sir.

Q. You didn't see any of them posted up?

A. No sir.

Q. You don't know of your own knowledge that any of them were posted up?

A. I could soon ascertain by——

227 Q. Answer, of your own knowledge?

A. Yes sir.

Q. Did you see it?

A. No sir.

Q. How do you know?

A. Because I had occasion to go to different agents and ask for tariff rates and they went to their files to get them.

Q. They told you so?

A. No sir, I saw them get them.

Q. You did not see them posted up?

A. No sir.

Q. Of your own knowledge you do not know that they were posted up except what the agents told you?

A. I have gone to the agents' files and got these tariffs and looked at the rates, as you can go over to the agent at this station and get any tariff we have.

Q. The only place you ever saw them was in the files, in the books?

A. Yes sir.

Q. You did not see them posted up?

A. No sir.

Redirect examination by Mr. MOORE:

Q. With reference to the posting up of the notice I will ask you to state what is done in that respect; what notices you put in the waiting rooms, and what files are kept in the different stations?

(Not answered.)

Q. State what you know?

A. In accordance with an understanding with the Interstate Commerce Commission the different roads—The different roads, as well as our own, have placards in all stations—all the tariffs of this company are on file with the agent and can be inspected by the public upon application.

228 Q. I will ask you to state how many of these notices are posted up in the ladies' waiting room and in the gentlemen's waiting room?

A. One in each.

Q. I will ask you to state whether or not soon after the passage of this Interstate Commerce Law, if it was customary to hang up the tariffs themselves in the waiting rooms of the depot?

(Not answered.)

Q. What was done with reference to the hanging up of the tariffs themselves in the waiting rooms of the depots?

A. The agents upon receipt of these tariffs,—each agent was sent three copies of the tariff, one for his own files, and one for the waiting room and one extra to do what he pleased with it,—these were hung up as the Commission requires. We have all seen them, stacks of them that high (indicating) and it was found by the Commission that the people didn't read these tariffs always going to the agent and asking him, and finally it was taken up by the different

lines with the Commission, and they said the most effective way would be to post the notices or have all notices on file and that was accepted by the Commission and they send out men to inspect the stations as to whether the notices are posted.

Q. How long has it been the practice——

Plaintiff objects.

Q. How long has it been the custom or practice to file these tariffs with the agent by putting up placards in the waiting rooms and actually giving the tariffs to the agent to show to the people upon application?

229 A. More than six years to my knowledge.

Q. And you say that was done in pursuance to an arrangement with the Interstate Commerce Commission?

(No answer.)

Q. Did the Commission make any printed order about that, do you remember?

A. I don't remember how the order was issued; whether it was in conference with us,—whether some of the roads went to the Commission and the Commission saw itself it was not practicable. It would not do. It wasn't any benefit to the public and what they sought to accomplish was not accomplished in that respect. Some body would tear them down.

Q. Somebody needing a piece of paper would tear off these tariffs?

A. Yes sir, and it was found the best results could be obtained by having the tariffs on file with the agent and these placards put up in the stations.

Q. Do you know whether, as a matter of fact, the Interstate Commerce Commission has inspectors going around and examining depots to see if the law is complied with?

A. I have never seen them in stations.

Q. Do you know whether they have them or not, as a matter of general knowledge?

A. They do have for a great many things and I presume——

Q. Has there ever been any complaint made by the Interstate Commerce Commission during the last six years that these tariffs have been posted or kept in the depot in the way you have
230 described, by placards in the waiting rooms and the tariffs themselves in possession of the agents?

Plaintiff objects.

(No answer.)

Garnishee offers to show by this witness that during the past six years the tariffs have been posted in the depots on all the railroads in the country, and on the Kansas City Southern, in the manner detailed by the witness, and no objection has ever been raised to it by the Interstate Commerce Commission, although they have had inspectors going over the country from place to place, who have had occasion to know, and could know, and did know, and have known of the manner in which the tariffs have been posted.

Plaintiff objected.

Q. If any complaints were made in respect to that matter on account of the Kansas City Southern, to whom would that complaint be referred, and who would have jurisdiction over it?

(No answer.)

Q. If you know, state.

A. It would be made direct to me, sir.

Q. Has any complaint of that kind ever been made?

A. No sir.

Q. Now Mr. Smythe, were you present at any conversation with Mr. Schaufler with reference to any rate upon this grain in controversy?

A. Yes sir, I was.

Q. Do you remember when that conversation was had?

A. The first conversation that I recollect of having with him was sometime in September, I think,—the latter part of September.

Q. I will ask you to state what occurred there at that time? What Mr. Schaufler wanted and what was said and done?

A. I would like to state just how it happened to be in Mr. Hanley's office.

Q. State the whole thing in your own way? Go ahead and state in your own way. Give the conversation, or the substance of it.

231 A. I happened to go into Mr. Hanley's office on some other mission and Mr. Schaufler was there, but how long he had been in the office I don't know, and Mr. Hanley said "Smythe, Mr. Schaufler wants *is* to help him out on the marketing of some of his grain along this line, what do you think we can do?" Or words to that effect. Well, I says "there is a market in Texarkana and Shreveport and West Charles and West Lake, and Joplin and Pittsburg." Mr. Schaufler said he had a good deal of grain along his line from stations, Pattonsburg and Omaha he mentioned in particular, and Shenandoah, and some in the elevator at Council Bluffs, and their shippers thought they could do some business along our lines if they had any rates. I don't know,—I think he asked Mr. Hanley if he could not fix a division for a 7 cent a hundred on some business he was going to deliver. We told him no, we didn't want the business, we have got more business than we can handle now. Mr. Schaufler said "I want you to help me out. I am trying to get some business for our line. I am trying to make a showing." He didn't specify any number of cars, who it was for, but he thought he could move some of his grain to our points.

Q. Go ahead.

A. I presume I was in the office ten minutes with Mr. Hanley and Mr. Schaufler but the question of the rate from Kansas City to Texarkana and Shreveport was discussed,—was mentioned as being 10 cents at that time. Mr. Schaufler wanted to know if we wouldn't put in a through rate so he could send some stuff right through from his points direct to some of our stations and asked what division we would take on stuff from his points to Texarkana and Shreveport.

Q. Well, what was the proportionate at that time?

232 Plaintiff objects: incompetent, irrelevant and immaterial; calling for an opinion and conclusion of the witness; and further, it assumes the witness knows.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. The proportionate at that time was 10 cents a hundred and Mr. Schaufler understood it.

Q. What next occurred?

A. I asked Mr. Schaufler what the through rate was and he said "it is about 16 cents isn't it?" and he said "I think it is," that is the impression we both had, that is the recollection of the rate, that we could make a rate on that figure if he wanted to join. Finally he came around and we told him we would accept on through billed grain from his point 8 cents.

Q. What would that 8 cents represent?

A. That would represent our division of the through rate.

Q. You say that 8 cents would represent the proportion of the Kansas City Southern of the through rate?

A. On through-billed grain.

Q. What was said at that time as to whether or not that grain should be through-billed or not?

A. That was the understanding it should be through-billed grain.

Q. How long, if anything was said, was that arrangement to continue?

A. There was no stipulation at that time. I recollect as well as if it had been five minutes ago Mr. Schaufler said he thought he could give us a few cars,—he didn't say 25 or 30 cars, or 35 cars,—he spoke about Texarkana and Shreveport and I told him about how much grain these points took a week, and he said he thought he could put in some business there,—he said a few cars, do a nice little business, is the very words he used.

233 Q. I will ask you to state if any of the cars that came through, involved in this case, did come through on through-billing, Omaha to Texarkana and Shreveport.

A. I would not say all of the billing, but undoubtedly some of the cars went through on through billing, that is, they were billed right from his stations to Texarkana and Shreveport. Not billed into Kansas City and re-consigned and new bill of lading taken out. That wasn't the intention at all. That wasn't the arrangement.

Q. Can you tell from any of the expense bills produced here, whether any of these shipments were on through billing from Omaha to Texarkana and Shreveport?

A. Yes sir.

Q. Were they or not?

A. The bills that I saw were all shipments that had been made as new shipments from Kansas City at a proportionate rate from Kansas City south.

Q. I will ask you to examine all of these bills that you haven't already and see whether or not all of the represent new billing from Kansas City, south, or whether there is a single one of them that represents through billing from Omaha to Texarkana?

(No answer.)

Q. I will ask you to state whether or not after Mr. Schaufler went back to Omaha, if he sent you any special tariffs covering, or intending to cover, the movement of this grain from Omaha to Texarkana and Shreveport?

Plaintiff objects as calling for an opinion and conclusion.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

234 Q. Did Mr. Schaufler say anything to you at the time this arrangement was made about Forrester Bros.?

A. Not a word, no sir. He was dealing strictly as a railroad proposition, and moving grain from his points to our rails. Absolutely wasn't a name mentioned.

Q. You say after he went home he sent you a tariff sheet; I will ask you to look at that tariff sheet which I hand you, marked for convenience Ex. 4. and state if that is the sheet Mr. Schaufler sent you?

A. Yes sir.

Garnishee now offers in evidence paper marked Ex. 4.

Plaintiff objects: incompetent, irrelevant and immaterial, its execution not having been proven, and it was never a tariff in compliance with the Interstate Commerce Law; contains no signatures of the parties,—simply purports to be a lithograph copy of some paper; and further, it is not binding upon the plaintiff. This plaintiff has not seen it.

Objection sustained by the court. To which ruling of the court garnishee at the time duly excepted and excepts.

Q. This came from Mr. Schaufler, didn't it?

A. Certainly it did, yes sir.

Plaintiff objects: incompetent, irrelevant and immaterial; and witness has not shown that he knows.

Plaintiff asks to cross examine the witness.

Cross-examination by J. M. WAYDE, Esq.:

Q. Mr. Smythe, do you know Mr. Schaufler's signature?

Plaintiff objects to this question, and to each succeeding question down to the offer of Ex. 4 by Mr. Crane, for the reason it is incompetent, irrelevant and immaterial, and not the best evidence.

Objection, and each of above mentioned objections, overruled by the court. To which rulings of the court plaintiff at the time duly excepted and excepts.

A. I think I would when I saw it, yes sir.

Q. Is that his signature on there?

A. There is never a written signature on a tariff, I never saw one in my life, nor anybody else.

235 Q. This is all there was of it?

A. I seen four or five of them for us for our files.

Q. How did you get this?

A. We got them through the mail.

Q. You don't know who sent this to you?

A. It came from the O. K. C. & E. office.

Q. How do you know?

A. From their envelope.

Q. Is that all you know about it?

A. That is enough I think.

Q. Is that all you know about it?

A. I know Mr. Schaufler admitted he had gotten out that tariff. I have talked with him about it twenty times, probably twenty-five.

Q. Did you talk about this twenty or twenty-five times?

A. Yes sir.

Q. When was that?

A. Well we began, I suppose, after Mr. Catlin and Mr. Fisher came down there to our office and presented some expense bills and Mr. Schaufler came over to see us about them.

Q. Is that the first you ever talked about it?

A. I think so.

Q. When was that? What date, about?

A. I don't know sir what date it was.

Q. Then that was sometime in November wasn't it

A. Along in there,—I don't know,—in December I think. I would not swear to what the date was.

Q. Then you never had any talk with him about it until that time?

A. There was no necessity for it.

Q. He didn't state at any of these times that he had gotten this out in behalf of Forrester Bros.?

A. He certainly did.

236 Q. That he got this out——

A. To take care of some business he had tried to make a contract for.

Q. Was that on an 8 cent rate?

A. That is on the basis of that division of that rate there. I don't know anything about his contract,—that is, so far as——

Q. He told you that was gotten out for Forrester Bros.?

A. That was gotten out to take care of some grain we talked about, he said.

Mr. MOORE: He said that in December?

A. Yes sir.

Mr. CRANE: We offer that. We think the cross examination has gone far enough. He can cross examine him later if he wants to. We renew the offer of that Exhibit 4.

Plaintiff objects to the introduction of Ex. 4 for the reason it is incompetent, irrelevant and immaterial; and for the further reason the testimony already shows that tariff never was filed; it never was published, and had no binding force or effect on this plaintiff; that this plaintiff is not bound by it, and it is incompetent as against this plaintiff.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Ex. 4 read in evidence, being in words and figures following, to-wit:

237

Ex. 4. E. C. J., 3/23/04.

"Route" Schedule No. 44 (Corrected).

Special Freight Tariff.

Omaha, Kansas City & Eastern R. R., Omaha & St. Louis R. R.,
Kansas City & Northern Connecting R. R.—Chas. H. Chappell,
Receiver.

Applying on Corn and Oats, Carloads, from Council Bluffs, Ia.,
Omaha, Neb., and Intermediate Stations, to Shreveport, La., and
Texarkana, Tex.

IN CENTS PER ONE HUNDRED POUNDS.

From—	To—	Rate.
Council Bluffs, Ia.....	
Omaha, Neb.....	Texarkana, Tex.....	
All K. C. & A. C. and		
O. & St. L. Stations...	Shreveport, La.....	16½

Minimum Weight.

Minimum weight 40,000 Lbs. per car.

Route via Kansas City and Kansas City Southern Railway.

Rates will expire October 31, 1901.

Issued October 11, 1901.

Effective September 27, 1901.

L. H. SCHAUFLEK,
(O. K. C. & E. R. R.

FTM. (C. & St. L. R. R.
(K. C. & N. C. R. R.

Kansas City, Mo.

L. F. MOORE,
(O. K. C. & E. R. R.

AGFA. (C. & St. L. R. R.
(K. C. & N. C. R. R.

Kansas City, Mo.

(10) E—

238 Q. Was this tariff ever filed with the Interstate Commerce Commission?

A. The Commission say not.

Q. Whose duty was it to file it with the Interstate Commerce Commission, if it should have been filed?

A. The line that published the rate.

It is agreed between the parties hereto that the joint tariff, Ex. 4.

was not filed with the Interstate Commerce Commission and is therefore not a legal tariff.

Plaintiff objects to the above agreement as stating a conclusion of law, witness has not qualified to answer, is stating merely an opinion and is incompetent, irrelevant and immaterial.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. Was there any other joint rate, or through rate made between the Kansas City Southern and the O. and St. L. of the Omaha and Kansas City Eastern, or the Kansas City Northern Connecting lines or either of them, prior to the year 1901?

A. On grain?

Q. On grain.

A. Not to these points, no sir. The business was handled on a proportionate rate out of Kansas City.

Q. You may state in a general way, in what way all of this corn in controversy here was handled from Kansas City to Texarkana, whether it was handled on a proportionate rate or not?

(No answer.)

Q. If you know, you may state how the corn was handled from Kansas City to Texarkana, whether it was handled on a proportionate rate or not?

(Question withdrawn.)

Q. I will ask you to look at the statement which I have handed you, *karmed* Ex. 5, and state what it is?

A. It is a copy of the way bills covering,—or extracts from 239 the way bills covering,—shipments of corn from Kansas City to Texarkana. All shipments I see were eleven cars I have noticed so far were not prepaid at Kansas City.

Q. That list you have,—state whether or not that is a list of these shipments in controversy, Forrester Bros. shipments?

A. Yes sir, showing by the billing out of Kansas City.

Q. Now you may state whether any of them—whether all of them were billed out from Kansas City to Texarkana on a proportionate rate of 10 cents or 14 cents as the case may be, and if any were not, please name them.

(Not answered.)

Q. Can you state whether or not the shipments in controversy were billed out, or re-billed out from Kansas City and went south on a proportionate rate?

Q. Well the bills themselves show that. They will show these were all re-consigned.

Q. Shipments out of Kansas City came in there, they show they are all reconsigned out of Kansas City?

A. There is some six or seven I think, there is some question about. There are about, I imagine, 200 bills to look up.

Q. Wherever the expense bills show a 10 cent rate or a 14 cent rate would that indicate anything as to whether it was a through shipment or whether it was rebilled from Kansas City south?

(Not answered.)

Q. If new bills of lading were taken out at Kansas City for the shipment from Kansas City south, then what do you say as to that?

A. A proportionate rate would apply. The only way it could apply legitimately. The legal rate would apply.

240 Plaintiff moves to strike out of the answer the words "the legal rate would apply" as being a conclusion of the witness. Motion overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

Q. I want to go hurriedly over that to a subsequent interview with Mr. Schaufler. Go ahead and state in your own way with reference to an interview with Mr. Schaufler and Mr. Fisher and Mr. Catlin, or all of them, after the time of the movement of the grain began?

A. We had a number with Mr. Schaufler and Mr. Moore. I think they came there first. I think the first interview I had was with some of the Northern Connecting lines people coming there. Going back to the first intimation we had there was any claim for overcharges was by some expense bills sent in by the Northern Connecting lines by Mr. Moore, I believe, asking us to remit. I threw them over and would not handle them. I said "it is a mistake, they have got nothing on this." I said, "this rate is 10¢." They were sent back and returned to Mr. Moore. They sent in two or three more bunches. They were sent in and they were returned with the same statement "we had given the correct rate on the shipments." I believe Mr. Schaufler came over along the first time and said he wanted us to keep on taking this grain. I said, "what grain do you mean?" and he said "that I talked to you about and you were to take at 8¢." I said "that has expired by limitation of your own tariff."

Q. At what time?

A. He was there along in December.

Q. What limitation did you mean?

A. I meant the tariff he had put out making it expire Oct. 31, 1901. Well, he said "I didn't think that was open." I said "didn't you put up your notices?" He said "Yes I did." I said
241 "that won't go as far as we are concerned; we can't take that stuff on that basis out of Kansas City." (Our rates at that time was 14¢.) It went on and I finally sent out and got this schedule, I said: "here is your own schedule,—you put that in to cover that business." He said "It could not be made to expire at that time." I said: "I am not a mind reader. You made it by your own act and made it expire Oct. 31. If you didn't want rates advanced we certainly would have notified you that the rate was 14¢." I knew so positively that expired Oct. 31, 1901, and by his own act, and nothing more was said about it. There wasn't a great deal of business moved under the conditions of what he termed was his contract.

Q. What occurred next after that?

A. They came over three or four times. Wanted to know if I would reconsider and wanted to see Mr. Hanley. Practically the

same thing. We haven't any contract with you on that stuff. You made it expire by your own terms. And admitted that was published to take care of this particular business.

Q. That is, the Forrester Bros. business?

A. Yes sir, and he won't deny that.

Q. There has been some talk here about a conversation on St. Louis at Faust's and at the Planter Hotel, make the thing as brief as possible and state whether or not you agreed at that time to protect the cars that were in transit, or in the yards at Kansas City, at an 8 cent rate?

Plaintiff asks that the witness state the conversation.

A. I will go back to where Mr. Schaufler came to me and kept after me every day. I said: "That is your funeral." I said: "If you have made a contract you ought to protect it. You didn't make it with us." He said: "You ought to protect it. You can do 242 it and make some money." I said: "We can't handle the business we have out of Kansas City, let alone taking business of that sort." He insisted and felt he had made a contract, and finally from his persistent efforts I said "we will see if we can help you out some,—or help out some." He claimed there was good roads between Texarkana and Shreveport never had advanced the rate to 14 cents, and he wanted me to go and talk to Mr. Catlin and I believe Fisher, perhaps, about it. I believe it was Christmas Eve. They had deviled the life out of us, he did, and Mr. Schaufler said he had worried himself sick about it. I said: "What do you want to put your worries on us for? If you made a contract you didn't make it with us." He said Mr. Fisher was feeling very bad, he was sick about it, and was after him continually, and then Mr. Schaufler came over to us and some question about the expiration of this tariff came up every single time, and all Mr. Schaufler said, we should not have made it expire, etc. and we were not mind-readers and we could not tell whether he had one car or forty cars coming through on it.

Q. Did you say anything in St. Louis about protecting the stuff in transit, or in the yards here?

A. Going there I think they did ask me about this. I met them in the Planters Hotel in St. Louis, and this was discussed. I recollect it. There was so many things said about it, but I was very careful. I said I will try to do this, I will have to submit it. Mr. Catlin wanted to know if I would agree, I said "I will try and see what I can do on this," as I said to Mr. Hanley the next morning. I didn't absolutely agree to protect that business on this stuff, but I would take it up and see what I could do. I think in their 243 great anxiety to get a rate protecting them, I think they took what I said to mean I would positively, and I am just as positive that I never did.

Q. Did you take it up with Mr. Hanley?

A. Yes sir.

Q. What was his position?

A. That we could not do it.

Q. Did you have any authority at that time to make any rate which was below the published tariff rate?

A. I did not.

Q. What authority did you have in reference to making rates either above or below the established rate?

A. The grain traffic at that time was all under Mr. Hanley's jurisdiction; we followed out his instructions on that and Mr. Hanley told me we could not—we could not deviate from our published tariff, and that that was his instructions from the president, Mr. Knott.

Q. Are there any other interviews that you had?

A. Why there was, I think, one or two after that, I mean with them. We had six or seven all told. I can't—we have so many interviews every day with people, it is pretty hard——

Q. Just to make it short did you ever at any time agree with Mr. Schaufler or Mr. Catlin or Mr. Fisher or anybody else to take care of the grain at an 8 cent rate?

(No answer.)

Q. Did you ever at any time say to Mr. Catlin or Mr. Fisher, any time, or to Mr. Schaufler, or anybody else, that you would protect any 8 cent rate on this grain after Oct. 31, 1901?

A. No sir.

244 Cross-examination by Mr. COSTE:

Q. You say that in this interview at Faust's or at the Planters Hotel you did say to these people that you would do all you could, but you claim not to have said that you would protect certain grain?

A. I said I would do what I could to help them out on this stuff they had.

Q. That is, on the basis of this 8 cent rate?

A. I don't think that was mentioned. That is, the particular figure was mentioned.

Q. That is what you understood they wanted?

A. That was what they were after, yes sir.

Q. And that was well understood by you at that time?

A. Well they might have said they could have moved it at a higher rate and got even. They wanted some help.

Q. Wasn't that the very thing thoroughly understood between you on all of these occasions, when you saw them, on all of these occasions? Wasn't they at you to have this fixed up on an adjustment of the grain shipments on an 8 cent rate?

A. Yes sir.

Q. Why did you say you would do all you could? Wasn't it because you believed they were right at that time?

A. No sir. Because Mr. Schaufler came to us and said these people were worrying him to death. He said they had some stuff sold and some of it in transit and he had made a contract with them of some sort, or told them he would do this, and he wanted us to help him out. Mr. Schaufler had been employed by Mr. Hanley before and went to him as a personal friend.

245 Q. If you believed your rate was right and they were wrong, why did you tell them you would do all you could on this thing?

A. Just as any friendly connection would do to us. Sometimes our agents make a misshipment, misrating of stuff to another connection and make it up from a round about rate, and frequently we accept the same division from that junction as we would if it went over the proper junction. There is an interchange of courtesies often by different lines.

Q. You meant to make this a matter of courtesy for which you would have made an effort with your own road to get them to allow a claim which you thought they ought not to pay, and in which the other fellows were wrong in asking payment,—would you do that against the road in whose employ you were, as a matter of courtesy, is that the idea?

A. Well I don't know as I understand you correctly.

Q. I ask you in the first place,—it seems to me plain enough,—if you didn't make this proposition because you believed it was right for these people to get that business adjusted to that rate?

A. No sir, because as I said to them in the conversation I didn't have any more idea when these bills came in to me that they were claiming this rate than I have that I am going to go out and take dinner with one of these gentlemen tonight. You could not surprise me more if you would give me a railroad.

Q. But you did promise to go home and do what you could against your own road to pay their claim?

A. Not against my road; in Mr. Schaufler's behalf.

Q. They wanted money back from your road?

A. They wanted it back from somebody. I told them I would be glad to do what I could.

246 Q. And that was a matter of courtesy to them, as you explained?

A. Yes sir, to Mr. Schaufler.

Q. How many cars were mentioned, they had, at that interview at Faust's and at the Planters' as being in Kansas City on the tracks, including all these shipments?

A. Well I could not be certain as to the figures. I would not like to, but I think it was,—the Kaw Elevator Company told me they had eighty four cars in their yards.

Q. Wasn't there some discussed outside of the yards?

A. They said they had some they presumed were in transit, but they could not tell me that.

Q. Wasn't there something said about 200 cars, or something in that neighborhood, in the yards or on the tracks somewhere?

A. No sir.

A. Wasn't this figure of 400 or 500 cars stated to you when Mr. Schaufler first negotiated with you about this rate?

A. Absolutely not.

Q. Then when you got your authority to take—as he puts it—a few cars at this 8 cent rate, that is all is it; there was no greater number of cars mentioned?

A. No sir, that is all.

Q. Hanley told you you could take just a few cars at that rate, that is, for an accommodation?

A. Yes sir.

Q. And there was no mention made, as claimed by Mr. Schaufler?

A. There was not, absolutely.

Q. He said it would be a nice little business didn't he, to you?

247 A. Yes sir, words to that effect. A little business is not five hundred cars.

Q. Well a nice little business was stated as an inducement to you wasn't it?

A. No sir not at that time. We had all the business we could handle at the tariff rate.

Q. When you came back from St. Louis there was an interview with Mr. Hanley, wasn't there? The interview which was going on between yourself and Mr. Schaufler, and Mr. Catlin and Mr. Fisher were there, I believe, and Mr. Hanley joined you? That was about this same matter?

A. Yes sir.

Q. There didn't you advocate with Mr. Hanley the payment of these overcharges?

(Not answered.)

Q. What occurred at that conversation? What was said there that day?

A. Well there was a general talk as to this business, and that they had sold, I think, on Mr. Schaufler's guarantee,—and in one of the conversations it appeared that Mr. Schaufler had telephoned them after the expiration of even the ten cent rate to go ahead and never said a word to us about it; never a word.

Q. Well, what more took place?

A. This was the interview,—I think that,—I don't know whether it was two or three days after I got back from St. Louis,—I am not positive as to that, but Mr. Hanley just said we could not protect that rate.

Q. Didn't Mr. Hanley turn the whole thing over to you in one of these conversations?

A. He went out of doors and said "I will just leave it to you, Smythe," but that wasn't the way I got my instructions.

Q. Had you got any other instructions prior to that?

A. I got instructions not to protect the rate.

Q. When the matter was left to you you could do what you promised to do in St. Louis?

A. No sir.

Q. How soon did you have the other orders?

A. I had them at the time.

Q. You had your orders not to do anything, and Mr. Hanley said to you in the presence of these gentlemen "I will leave everything to you Mr. Smythe?"

A. I knew I hadn't authority to settle these rates as well as Mr. Moore had authority to make rates.

Q. After that was said was there anything said between any of you?

A. I think there wasn't any more between Mr. Fisher and Mr. Catlin and Mr. Hanley. I don't think I was in there during that interview. I know I had been in Kansas City a couple of days and went to see him at his house and tried to get him at the hotel but didn't find him. That is my recollection of that other transaction.

Q. When you went to St. Louis what did you go down there for?

A. I went on several missions.

Q. Was this one of them?

A. I went at Mr. Schauler's request to talk to Mr. Catlin and Mr. Fisher.

Q. Did you make inquiries around among other roads in this southwestern competition, as to what they thought of the propriety or advisability of paying these overcharges back?

(Not answered.)

249 Redirect examination by Mr. MOORE:

Q. You said in 1901 there was no joint tariff between the northern lines and the southern covering grain shipments to Texarkana and Shreveport, except this tariff introduced in evidence?

A. None with the Kansas City and Southern connections, no sir.

Q. In the absence of any joint tariff what rate would shipments take from Omaha to Texarkana, passing over the Northern lines and over the Kansas City Southern?

Plaintiff objects: incompetent, irrelevant and immaterial; calling for an opinion and conclusion, and assuming that the witness knows.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. Well, the basis of making these rates was the local added to the proportional.

Q. That would have made a rate of 19 cents at that time?

Plaintiff objects: for the reasons stated above.

Objection overruled by the court. To which ruling of the court plaintiff at the time duly excepted and excepts.

A. 19 cents, yes sir.

Q. Mr. Fisher testified last night, I believe, that the open tariff rate on this stuff from Kansas City to Texarkana was 10 cents up to, I believe, November 10, 1901; you may state whether or not that is correct, if you understand it?

A. That is the correct rate, yes sir, at that time.

Q. I will ask you to state if 14 cents was the open legal rate according to the tariffs between Kansas City and Texarkana after Nov. 10, 1901?

(Question withdrawn.)

250 In this trial it is stipulated and agreed between plaintiff and garnishee that all testimony taken on either of the trials of the case of Fields & Slaughter Company vs. the same defendants

and the same garnishee, and all documentary evidence introduced on either of said trials could be used in this case and introduced in evidence in this case, except where the witness or witnesses were present in person and testified, and that the testimony, both verbal and documentary, could be introduced from the case-made in the Fields & Slaughter case, or from the record of the official stenographer, and that each party reserves the right to make such objections to the testimony so offered as it might see fit at the time and might be made if the witnesses were on the stand in person.

Thereupon, garnishee having introduced all its evidence and testimony in chief, rests its case.

Thereupon, plaintiff announced that it had no further testimony or evidence to offer and rested its case.

Thereupon garnishee rested its case.

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EX. 1—FREIGHT BILL No. 381.

Port Arthur Route. K. C. Station, 12, 10, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Co., Dr.
For transportation of freight from K. C. to Texarkana Station.

Date, 12, 9, 1901; W. B. No. T x 100; car No. 4544; initials, P. G.

No. and description of articles.		Weight.	Rate.	Amount.
Nicholson & Co.	Corn	67450	14	94.43
Total				94.43
Ex. car No. 52318. Initials, KCM.				

Received payment 12, 11, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.
E. PHENNEGE, Agent.

EX. 2—FREIGHT BILL No. 418.

Port Arthur Route. K. C. Station, 12, 10, 1901.

M. Forrester Bros. to Kansas City Southern Railway Co., Dr.
For transportation of freight from K. C. to Texarkana Station.

Date, 12, 9, 1901; W. B. No. T x 110; car No. 16104; initials, C. G. W.

No. and description of articles.		Weight.	Rate.	Amount.
Marks.				
M. Gr. & E. Co.	Corn	77190	14	108.07
Total				108.07

Received payment 12, 11, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.
E. PHENNAGE, Agent.

EX. 3—FREIGHT BILL No. 392.

Port Arthur Route. K. C. Station, 12, 12, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Co., Dr.
For transportation of freight from K. C. to Texarkana Station.Date, 12, 10, 1901; W. B. No. T x 127; car No. 3464; initials,
P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn.	41000.	14	57.40
Total.....				57.40

Ex. Car No. 30456-33506. Initials, C. M.

Received payment 12, 12, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing.
E. PHENNEGE, Agent.

EX. 4—FREIGHT BILL No. 389.

Port Arthur Route. K. C. Station, 12, 12, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 10, 1901; W. B. T x 126; car No. 4195; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn.	40000	14	56.00
Total.....				56.00

Ex. car No. 22256. Initials, C. M.

Received payment 12, 12, 1901, subject to an additional charge
for storage or demurrage if property is not removed in forty-eight
(48) hours after placing.
E. PHENNEGE.

EX. 5—FREIGHT BILL No. 384.

Port Arthur Route. K. C. Station, 12, 7, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 6, 1901; W. B. T x 75; car No. 4553; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	67230	14	94.12
Total.....				94.12

Ex. Cr. No. 55612. Initials, C. M.

Received payment 12, 7, 1901, subject to an additional charge
for storage or demurrage if property is not removed in forty-eight
(48) hours after placing.
E. PHENNEGE, Agent.

EX. 6—FREIGHT BILL No. 323.

Port Arthur Route. K. C. Station, 12, 7, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 6, 1901; W. B. No. Tex. 73; car No. 3025; Initials,
P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nichols & Co.	Corn	50000	14	70.00
	Total.....			70.00

Ex. car No. 2380. Initials, I. & M.

Received payment 12, 7, 1901, subject to an additional charge for
storage or demurrage if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

EX. 7—FREIGHT BILL No. 369.

Port Arthur Route. K. C. Station, 12, 7, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 6, 1901; W. B. T x 76; car No. 4226; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn.	55890	14	78.25

Ex. car. No. 44916.

Received payment 12, 7, 1901, subject to an additional charge for
storage or demurrage, if property is not removed in forty eight
(48) hours after placing. E. PHENNEGE, *Agent*.

EX. 8—FREIGHT BILL No. 324.

Port Arthur Route. K. C. Station, 12, 5, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.For transportation of freight from Kansas City, Mo., to Tex-
arkana, Tex., Station.Date, 12, 5, 1901; W. B. No. Tex. 501; car No. 13216; initials,
K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	52248	14	73.15
	Total.....			73.15

Ex. car No. 55759. Initials, U. P.

Received payment 12, 7, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

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EX. 9.—FREIGHT BILL No. 360.

Port Arthur Route. Kansas City, Mo., Station, 12, 5, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.For transportation of freight from Kansas City, Mo., to Texarkana,
Texas.Date, 12, 5, 1901; W. B. No. Tex. 56; car No. 15000; initials,
P. G. Station.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	68376	14	95.73
	Total.....			95.73

Ex. car No. 65826. Initials, C. M.

Received payment 12, 7, 1901, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight
(48) hours after placing.
E. PHENNEGE, Agent.

EX. 10—FREIGHT BILL No. 359.

Port Arthur Route. K. C. Station, 12, 4, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 3, 1901; W. B. No. Tex. 24; car No. 12605; initials,
K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	42400	14	59.56
	Total.....			59.56

Ex. car No. 7574. Initials, C. M.

Received payment 12, 4, 1901, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight
(48) hours after placing.
E. PHENNEGE, Agent.

EX. 11—FREIGHT BILL No. 357.

Port Arthur Route. K. C. Station, 12, 4, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Co., Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 3, 1901; W. B. No. Tex. 32; car No. 3386; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Grain & E. Co.	Corn	41900	14	58.66
	Total.....			58.66

Ex. car No. 32166. Initials, C. M.

Received payment 12, 4, 1901, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight
(48) hours after placing.
E. PHENNEGE, Agent.

EX. 12—FREIGHT BILL No. 354.

Port Arthur Route. K. C. Station, 12, 4, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 3, 1901; W. B. Tex. 33; car No. 3034; initials, P. G.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	55100	14	77.14
Total.....				77.14

Ex. car No. 47012. Initials, C. M.

Received payment 12, 4, 1901, subject to an additional charge for storage or demurrage if property is not removed in forty-eight (48) hours after placing.
E. PHENNEGE, *Agent*.

254 EX. 13—FREIGHT BILL No. 350.

Port Arthur Route. K. C. Station, 12, 4, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 3, 1901; W. B. No. Tex. 35; car No. 5002; initials, P. G.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	56300	14	78.82
Total.....				78.82

Ex. car No. 46932. Initials, C. M.

Received payment 12, 4, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.
E. PHENNEGE, *Agent*.

EX. 14—FREIGHT BILL No. 351.

Port Arthur Route. K. C. Station, 12, 4, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 3, 1901; W. B. Tex. 34; car No. 3854; initials, P. G.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	56900	14	79.66
Total.....				79.66

Ex. car No. 64922. Initials, C. M.

Received payment 12, 4, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.
E. PHENNEGE, *Agent*.

EX. 15—FREIGHT BILL No. 353.

Port Arthur Route. K. C. Station, 12, 4, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 3, 1901; W. B. No. Tex. 26; car No. 13771; initials,
K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	57300	14	80.22
	Total.....			80.22

Ex. car No. 52726. Initials, C. M.

Received payment 12, 4, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

EX. 16—FREIGHT BILL No. 346.

Port Arthur Route. K. C. Station, 12, 4, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 2, 1901; W. B. Tex. 5; car No. 4316; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Mo. Gr. & E. Co.	Corn	66300	14	92.82
	Total.....			92.82

Ex. car No. —. Initials, —.

Received payment 12, 3, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

255 EX. 17—FREIGHT BILL No. 335.

Port Arthur Route. K. C. Station, 12, 4, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 3, 1901; W. B. No. Tx. 25; car. No. 248; initials, P. G.

Marks.	No. and description.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	45090	14	63.13
	Total.....			63.13

Ex. car No. 30288. Initials, C. M.

Received payment 12, 4, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

EX. 18—FREIGHT BILL No. 361.

Port Arthur Route. K. C. Station, 12, 4, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 3, 1901; W. B. No. Tex. 31; car No. 4326; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	67190	14	94.07
Total.....				94.07

Ex. car No. 60736. Initials, C. M.

Received payment 12, 4, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing.E. PHENNEGE, *Agent*.

EX. 19—FREIGHT BILL No. 5.

Port Arthur Route. K. C. Station, 12, 31, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 3, 1901; W. B. No. Tx. 471; car No. 3527; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	56000	14	78.40
Total.....				78.40

Ex. car No. —. Initials, —.

Received payment 1, 2, 1902, subject to an additional charge
for storage or demurrage if property is not removed in forty-eight
(48) hours after placing.E. PHENNEGE, *Agent*.

EX. 20—FREIGHT BILL 5.

Port Arthur Route. K. C. Station, 12, 31, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 31, 1901; W. B. No. Tx. 472; car No. 3765; initials,
P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	56000	14	78.40
Total.....				78.40

Ex. car No. —. Initials, —.

Received payment 1, 2, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing.E. PHENNEGE, *Agent*.

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Ex. 21—FREIGHT BILL No. 5.

Port Arthur Route. K. C. Station, 12, 31, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 31, 1901; W. B. No. Tx. 473; car No. 3845; initials,

P. G.

Marks.	No. and description.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. —. Initials, —.

Received payment 1, 2, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.
E. PHENNEGE, *Agent*.

Ex. 22—FREIGHT BILL No. 5.

Port Arthur Route. K. C. Station, 12, 31, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 31, 1901; W. B. No. Tx. 474; car No. 4189; initials,

P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. —. Initials, —.

Received payment 1, 2, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.
E. PHENNEGE, *Agent*.

Ex. 23—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 12, 31, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 31, 1901; W. B. No. Tex. 475; car No. 7670; initials,

P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	44000	14	61.60
	Total.....			61.60

Ex. car No. —. Initials, —.

Received payment 1, 2, 1902, subject to an additional charge for storage or demurrage if property is not removed in forty-eight (48) hours after placing.
E. PHENNEGE, *Agent*.

EX. 24—FREIGHT BILL No. 5.

Port Arthur Route. K. C. Station, —, —, —.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 31, 1901; W. B. No. Tx. 476; car No. 11275; initials,
K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	44000	14	61.60
Total.....				61.60

Ex. car No. —. Initials, —.

Received payment 1, 2, 1902, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight (48)
hours after placing. E. PHENNEGE, *Agent*.

257 EX. 25—FREIGHT BILL No. 6.

Port Arthur Route. K. C. Station, 12, 31, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 31, 1901; W. B. No. Tx. 477; car No. 3933; initials,
P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Oats	4500	14	63.00
Total.....				63.00

Ex. car No. —. Initials, —.

Received payment 1, 2, 1902, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight (48)
hours after placing. E. PHENNEGE, *Agent*.

EX. 26—FREIGHT BILL No. 518.

Port Arthur Route. K. C. Station, 12, 30, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 30, 1901; W. B. No. Tx. 457; car No. 20118; initials,
K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	63000	14	88.20
Total.....				88.20

Ex. car No. 66558. Initials, Wab.

Received payment 12, 31, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

EX. 27—FREIGHT BILL No. 4.

Port Arthur Route. K. C. Station, 12, 31, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 30, 1901; W. B. No. Tx. 438; car No. 3341; initials,
P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	40,000	14	56.00
	Total.....			56.00

Ex. car No. —. Initials, —.

Received payment 12, 31, 1901, subject to an additional charge
for storage or demurrage if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

EX. 28—FREIGHT BILL No. 3.

Port Arthur Route. K. C. Station, 12, 31, 1901

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 30, 1901; W. B. No. Tx. 437; car No. 3498; initials,
P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	60000	14	84.00
	Total.....			84.00

Ex. car No. P. Initials —.

Received payment 12, 31, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

258 EX. 29—FREIGHT BILL No. 3.

Port Arthur Route. K. C. Station, 12, 31, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 30, 1901; W. B. No. Tx. 436; car No. 5001, initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. —. Initials, —.

Received payment 12, 31, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

EX. 30—FREIGHT BILL No. 480.

Port Arthur Route. K. C. Station, 12, 16, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 14, 1901; W. B. No. Tex. 204; car No. 17182; initials,
N. W. C.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	44000	14	61.60
	Total.....			61.60

Ex. car No. —. Initials, —.

Received payment 12, 16, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

EX. 31—FREIGHT BILL No. 688.

Port Arthur Route. K. C. Station, 1, 3, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.For transportation of freight from Kansas City, Mo., to Tex-
arkana, Tx., Station.

Date, 1, 3, 1902; W. B. No. Tex. 47; car No. 1948; initials, R. I.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Oats	33800	14	47.32
	Total.....			47.32

Ex. car No. —. Initials, —.

Received payment 1, 6, 1902, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight (48)
hours after placing. E. PHENNEGE, *Agent*.

EX. 32—FREIGHT BILL No. 431.

Port Arthur Route. K. C. Station, 12, 31, 1901.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 30, 1901; W. B. No. Tx. 443; car No. 12155; initials,
St. L. S. F.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	62632	14	87.68
	Total.....			87.68

Ex. car No. —. Initials, —.

Received payment 12, 31, 1901, subject to an additional charge
for storage and demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

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EX. 33—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 18, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 7, 1902; W. B. No. Tx. 345; car No. 14109; initials,
K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	56000	14½	28.20
	Total.....			81.20

Ex. car No. —. Initials, —.

Received payment 1, 18, 1902, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight (48)
hours after placing. E. PHENNEGE, Agent.

EX. 34—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 18, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to S'port Station.

Date, 1, 17, 1902; W. B. No. S. T. 293; car No. 221; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	55000	14½	79.75
	Total.....			79.75

Ex. car No. —. Initials, —.

Received payment 1, 18, 1902, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight (48)
hours after placing. E. PHENNEGE, Agent.

EX. 35—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 18, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.For transportation of freight from Kansas City, Mo., to S'port
Station.Date, 1, 17, 1902; W. B. No. S. T. 292; car No. 3889; initials,
P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	55000	14½	79.75
	Total.....			79.75

Ex. car No. —. Initials, —.

Received payment 1, 18, 1902, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight (48)
hours after placing. E. PHENNEGE, Agent.

Ex. 36—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 18, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to S'port Station.

Date, 1, 17, 1902; W. B. No. S. T. 291; car No. 3399; initials,
P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	55000	14½	79.75
	Total.....			79.75

Ex. car No. —. Initials, —.

Received payment 1, 18, 1902, subject to an additional charge for
storage and demurrage, if property is not removed in forty-eight (48)
hours after placing. E. PHENNEGE, *Agent*.

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Ex. 37—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 18, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to S'port Station.

Date, 1, 17, 1902; W. B. No. St. 290; car No. 366; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	55000	14½	79.75
	Total.....			79.75

Ex. car No. —. Initials, —.

Received payment 1, 18, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

Ex. 38—FREIGHT BILL No. 641.

Port Arthur Route. K. C. Station, 1, 17, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 16, 1902; W. B. No. Tx. 333; car No. 52455; initials, R. I.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Oats	52800	14	73.92
	Total.....			73.92

Ex. car No. —. Initials, —.

Received payment 1, 17, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

Ex. 39—FREIGHT BILL No. 652.

Port Arthur Route. K. C. Station, 1, 17, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.For transportation of freight from Kansas City, Mo., to Texarkana,
Tx., Station.

Date, 1, 16, 1902; W. B. No. Tx. 322; car No. 3871; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 62806. Initials, —.

Received payment 1, 17, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing.E. PHENNEGE, *Agent*.

Ex. 40—FREIGHT BILL No. 677.

Port Arthur Route. K. C. Station, 1, 17, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 16, 1902; W. B. No. Tx. 321; car No. 3393; initials, —.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 64913. Initials, —.

Received payment 1, 17, 1902, subject to an additional charge
for storage and demurrage, if property is not removed in forty-eight
(48) hours after placing.E. PHENNEGE, *Agent*.

261 Ex. 41—FREIGHT BILL No. 731.

Port Arthur Route. K. C. Station, 1, 17, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 16, 1902; W. B. No. Tx. 320; car No. 14275; initials
K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	44000	14	61.60
	Total.....			61.60

Ex. car No. 50882. Initials, Wab.

Received payment 1, 17, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing.E. PHENNEGE, *Agent*.

EX. 42—FREIGHT BILL No. 428.

Port Arthur Route. K. C. Station, 1, 17, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 16, 1902; W. B. No. Tx. 319; car No. 4829; initials, P. G.

No. and description		Weight.	Rate.	Amount.
Marks.	of articles.			
Nicholson & Co.	Corn	58580	14	81.90
Total.....				81.90

Ex. car No. 67394. Initials, Wab.

Received payment 1, 17, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing.E. PHENNEGE, *Agent*.

EX. 43—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 17, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.For transportation of freight from Kansas City, Mo., S'port, Tx.,
Station.

Date, 1, 16, 1902; W. B. No. St. 260; car No. 4809; initials, P. G.

No. and description		Weight.	Rate.	Amount.
Marks.	of articles.			
Haronn Com. Co.	Corn	50000	14	77.00
Total.....				77.00

Ex. car No. —. Initials, —.

Received payment 1, 17, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing.E. PHENNEGE, *Agent*.

EX. 44—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 17, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to S'port Station.

Date, 1, 16, 1902; W. B. No. St. 259; car No. 14084; initials,
K. C. S.

No. and description		Weight.	Rate.	Amount.
Marks.	of articles.			
Haronn Com. Co.	Oats	44000	14	61.60
Total.....				61.60

Ex. car No. —. Initials, —.

Received payment 1, 16, 1902, subject to an additional charge
for storage and demurrage, if property is not removed in forty-eight
(48) hours after placing.E. PHENNEGE, *Agent*.

262 Ex. 45—FREIGHT BILL No. 815.

Port Arthur Route. K. C. Station, 1, 16, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 15, 1902; W. B. No. Tx. 305; car No. 53213; initials,
R. I.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	62500	14	87.50
Total.....				87.50

Ex. car No. —. Initials, —.

Received payment 1, 16, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

Ex. 46—FREIGHT BILL No. 678.

Port Arthur Route. K. C. Station, 1, 16, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 15, 1902; W. B. No. Tx. 303; car No. 70261; initials, C. P.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Fr. & E. Co.	Corn	66000	14	92.40
Total.....				92.40

Ex. car No. 63024. Initials, Wab.

Received payment 1, 16, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

Ex. 47—FREIGHT BILL No. 647.

Port Arthur Route. K. C. Station, 1, 15, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.For transportation of freight from Kansas City, Mo., to Texarkana,
Tx., Station.Date, 1, 14, 1902; W. B. No. Tx. 289; car No. 6918; initials,
I. M. O.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	32900	14	46.06
Total.....				46.06

Ex. car No. 64161. Initials, —.

Received payment 1, 15, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

Ex. 48—FREIGHT BILL No. 647.

Port Arthur Route. K. C. Station, 1, 15, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 14, 1902; W. B. No. 4288; car No. 20168; initials,
K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	38500	14	53.90
	Total.....			53.90

Ex. car No. 64161. Initials, Wab.

Received payment 1, 15, 1902, subject to an additional charge
for storage and demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENEGE *Agent*.

263 Ex. 49—FREIGHT BILL No. 514.

Port Arthur Route. K. C. Station, 1, 15, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 14, 1902; W. B. No. Tx. 286; car No. 83615; initials,
C. P.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Corn	56600	14	79.24
	Total.....			79.24

Ex. car No. 64452. Initials, Wab.

Received payment 1, 15, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENEGE, *Agent*.

Ex. 50—FREIGHT BILL No. 507.

Port Arthur Route. K. C. Station, 1, 15, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 14, 1902; W. B. Tx. 284; car No. 11826; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Corn	56900	14	79.66
	Total.....			79.66

Ex. car No. 61446. Initials, Wab.

Received payment 1, 15, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENEGE, *Agent*.

EX. 51—FREIGHT BILL No. 654.

Port Arthur Route. K. C. Station, 1, 13, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 11, 1902; W. B. No. Tx. 249; car No. 3676; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	44000	14	61.60
Total.....				61.60

Ex. car No. 7373. Initials, Wab.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 52—FREIGHT BILL No. 655.

Port Arthur Route. K. C. Station, 1, 13, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 11, 1902; W. B. No. Tx. 248; car No. 14190; initials,
K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	66000	14	92.40
Total.....				92.40

Ex. car No. 1403. Initials, O. K.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight hours after placing.

E. PHENNEGE, *Agent*.

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EX. 53—FREIGHT BILL No. 653.

Port Arthur Route. K. C. Station, 1, 13, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 11, 1902; W. B. No. Tx. 247; car No. 4915; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	44000	14	61.60
Total.....				61.60

Ex. car No. 50565. Initials, Wab.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 54—FREIGHT BILL No. 637.

Port Arthur Route. K. C. Station, 1, 13, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 11, 1902; W. B. No. Tx. 245; car No. 10524; initials,
G. H. T. A.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	43620	14	61.07
	Total.....			61.07

Ex. car No. 50644. Initials, Wab.

Received payment 1, 14, 1902, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight (48)
hours after placing.E. PHENNEGE, *Agent*.

EX. 55—FREIGHT BILL No. 543.

Port Arthur Route. K. C. Station, 1, 13, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 11, 1902; W. B. No. Tx. 244; car No. 4022; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 65444. Initials, Wab.

Received payment 1, 14, 1902, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight (48)
hours after placing.E. PHENNEGE, *Agent*.

EX. 56—FREIGHT BILL No. 505.

Port Arthur Route. K. C. Station, 1, 13, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 11, 1902; W. B. No. Tx. 243; car No. 4367; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	64200	14	89.88
	Total.....			89.88

Ex. car No. 67618. Initials, Wab.

Received payment 1, 14, 1902, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight
hours after placing.E. PHENNEGE, *Agent*.

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EX. 57—FREIGHT BILL No. 636.

Port Arthur Route. K. C. Station, 1, 13, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.For transportation of freight from K. C. to Texarkana Station.
Date, 1, 11, 1902; W. B. No. Tx. 241; car No. 3466; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	54800	14	76.72
	Total.....			76.72

Ex. car No. 1025. Initials, O. St. L.

Received payment 1, 14, 1902, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight (48)
hours after placing. E. PHENNEGE, Agent.

EX. 58—FREIGHT BILL No. 711.

Port Arthur Route. K. C. Station, 1, 11, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 10, 1902; W. B. No. Tx. 210; car No. 13927; initials,
K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	44400	14	62.16
	Total.....			62.16

Ex. car No. 5959. Initials, R. I.

Received payment 1, 14, 1902, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight (48)
hours after placing. E. PHENNEGE, Agent.

EX. 59—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 10, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 10, 1902; W. B. No. Tx. 89; car No. 4529; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harronn Com. Co.	Oats	44000	14	61.60
	Total.....			61.60

Ex. car No. 6666. Initials, —.

Received payment 1, 11, 1902, subject to an additional charge for
storage or demurrage, if property is not removed in forty-eight (48)
hours after placing. E. PHENNEGE, Agent.

EX. 60—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 10, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 10, 1902; W. B. No. Tx. 188; car No. 4201; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Oats	44000	14	61.60
Total.....				61.60

Ex. car No. —. Initials, —.

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight hours after placing.

E. PHENNEGE, *Agent*.

266 EX. 61—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 10, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 10, 1902; W. B. No. Tx. 187; car No. 4350; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Oats	44000	14	61.60
Total.....				61.60

Ex. car No. —. Initials, —.

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 62—FREIGHT BILL No. 426.

Port Arthur Route. K. C. Station, 1, 10, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company,
Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 10, 1902; W. B. No. Tx. 186; car No. 4151; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
J. M. Towner M. Co.	Corn	66080	14	92.51
Total.....				92.51

Ex. car No. 8474. Initials, M. & O.

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 63—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 10, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 10, 1902; W. B. No. S. T. 156; car No. 14013; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harronn Com. Co.	Oats	44000	14	61.60
Total.....				61.60

Ex. car No. —. Initials, —.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 64—FREIGHT BILL No. 695.

Port Arthur Route. K. C. Station, 1, 10, 1902.

M. Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 9, 1902; W. B. No. Tx. 168; car No. 1068; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Cr. & E. Co.	Oats	41200	14	57.68
Total.....				57.68

Ex. car No. —. Initials, —.

Received payment 1, 10, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 65—FREIGHT BILL No. 495.

Port Arthur Route. K. C. Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 9, 1902; W. B. No. Tx. 161; car No. 3262; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Corn	45700	14	63.98
Total.....				63.98

Ex. car No. 19154. Initials, C. M.

Received payment 1, 10, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 66—FREIGHT BILL No. 539.

Port Arthur Route. K. C. Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 9, 1902; W. B. No. Tx. 150; car No. 20143; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
W. S. Nicholson.	Corn	66000	14	92.40
	Total			92.40

Ex. car No. 12555. Initials, I. M. S.

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 67—FREIGHT BILL No. 573.

Port Arthur Route. K. C. Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 9, 1902; W. B. No. Tx. 159; car No. 3207; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Corn	66000	14	92.40
	Total			92.40

Ex. car No. 67336. Initials, W. A. B.

Received payment 1, 10, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 68—FREIGHT BILL No. 665.

Port Arthur Route. K. C. Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 9, 1902; W. B. No. Tx. 158; car No. 4140; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
	Total			92.40

Ex. car No. 23507. Initials, N. W.

Received payment 1, 10, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

268 EX. 69—FREIGHT BILL No. 574.

Port Arthur Route. K. C. Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 9, 1902; W. B. No. Tx. 157; car No. 12418; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 61262. Initials, Wab.

Received payment 1, 10, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 70—FREIGHT BILL No. 660.

Port Arthur Route. K. C. Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 9, 1902; W. B. No. Tx. 156; car No. 13854; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 66921. Initials, Wab.

Received payment 1, 10, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 71—FREIGHT BILL No. 575.

Port Arthur Route. K. C. Station, 1, 9, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 8, 1902; W. B. No. Tx. 148; car No. 14173; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 65211. Initials, Wab.

Received payment 1, 9, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 72—FREIGHT BILL No. 571.

Port Arthur Route. K. C. Station, 1, 9, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 9, 1902; W. B. No. Tx. 147; car No. 3002; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Corn	66000	14	92.40
Ex. car No. 64883. Initials, Wab.				

Received payment 1, 9, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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Ex. 73—FREIGHT BILL No. 423.

Port Arthur Route. K. C. Station, 1, 9, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 8, 1902; W. B. No. Tex. 144; car No. 32052; initials, I. O. W.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Corn	62400	14	87.36
Total.....				87.36
Ex. car No. —. Initials, —.				

Received payment 1, 9, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 74—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 9, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 8, 1902; W. B. No. Tx. 140; car No. 11500; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronna Com. Co.	Corn	44000	14	61.60
Total.....				61.60
Ex. car No. —. Initials, —.				

Received payment 1, 9, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 75—FREIGHT BILL NO. —.

Port Arthur Route. K. C. Station, 1, 9, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 8, 1902; W. B. No. Tx. 139; car No. 11165; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	44000	14	61.60
	Total.....			61.60

Ex. car No. —. Initials, —.

Received payment 1, 9, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 76—FREIGHT BILL NO. —.

Port Arthur Route. K. C. Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Sp. 155; car No. 3407; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Oats	44000	14	61.60
	Total.....			61.60

Ex. car No. —. Initials, —.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 77—FREIGHT BILL NO. 491.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 99; car No. 20155; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	59200	14	82.88
	Total.....			82.88

Ex. car No. 68041. Initials, Wab.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 78—FREIGHT BILL No. 493.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 98; car No. 12239; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
So. Gr. Co.	Corn	56500	14	79.10
	Total.....			79.10

Ex. car No. 56728 (43922). Initials, —.

Received payment 1, 9, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 79—FREIGHT BILL No. 686.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 96; car No. 7396; initials, R. I.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Oats	37500	14	52.50
	Total.....			52.50

Ex. car No. —. Initials, —.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 80—FREIGHT BILL No. 427.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 95; car No. 20205; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Oats	56200	14	78.68
	Total.....			78.68

Ex. car No. 55460. Initials, C. M.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

271 EX. 81—FREIGHT BILL No. 521.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 94; car No. 15756; initials, G. W.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	57000	14	79.80
Ex. car No. 15756	Initials, —.			

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 82—FREIGHT BILL No. 522.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 93; car No. 14012; initials, G. W.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
W. T. Nicholson & Co.	Corn	55000	14	77.00
Ex. car No. —.	Initials, —.			
	Total.....			77.00

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 83—FREIGHT BILL No. 498.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 92; car No. 20019; initials, KCS.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	59300	14	83.02
Ex. car No. 62178.	Initials, Wab.			
	Total.....			83.02

Received payment 1, 17, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 84—FREIGHT BILL No. 492.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 90; car No. 20186; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	49500	14	69.30
	Total.....			69.30

Ex. car No. 1159. Initials, O. T.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 85—FREIGHT BILL No. 633.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 89; car No. 20135; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	55300	14	77.42
	Total.....			77.42

Ex. car No. 67112. Initials, C. M.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 86—FREIGHT BILL No. 629.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 76; car No. 33494; initials, C. M.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	40000	14	56.00
	Total.....			56.00

Ex. car No. —. Initials, —.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 87—FREIGHT BILL No. 687.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 74; car No. 53564; initials, C. M.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	49700	14	69.58
	Total			69.58

Ex car No. —. Initials, —.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. — FREIGHT BILL No. 724.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 73; car No. 53466; initials, C. M.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nichols & Co.	Corn	58296	14	81.61
	Total			81.61

Ex. car No. —. Initials, —.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 89—FREIGHT BILL No. 583.

Port Arthur Route. K. C. Station, 1, 2, 1909.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 2, 1902; W. B. No. Tex. 7; car No. 3187; initials, P. C.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	55000	14	77.00
	Total			77.00

Ex. car No. 2086. Initials, W. S. W.

Received payment 1, 4, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 90—FREIGHT BILL No. 425.

Port Arthur Route. K. C. Station, 12, 14, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 13, 1901; W. B. No. Tex. 194; car No. 59633; initials, N. Y. C.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	63900	14	89.46
	Total.....			89.46

Ex. car No. —. Initials, —.

Received payment 12, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 91—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 12, 14, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 13, 1901; W. B. No. Tex. 188; car No. 38847; initials, C. & P.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	41000	14	57.40
	Total.....			57.40

Ex. car No. 30456. Initials, C. M.

Received payment 12, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 92—FREIGHT BILL No. 385.

Port Arthur Route. K. C. Station, 12, 12, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 12, 1901; W. B. No. Tex. 179; car No. 20092; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	67390	14	94.35
	Total.....			94.35

Ex. car No. 55152. Initials, C. M. & B. P.

Received payment 12, 14, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

274 EX. 93—FREIGHT BILL No. 378.

Port Arthur Route. K. C. Station, 12, 12, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 12, 1901; W. B. No. Tex. 178; car No. 3403; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	60800	14	85.12
Total.....				85.12

Ex. car No. 12731. Initials, S. T. S. F.

Received payment 12, 14, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 94—FREIGHT BILL No. 409.

Port Arthur Route. K. C. Station, 12, 12, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 12, 1901; W. B. No. Tex. 174; car No. 4606; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66400	14	92.96
Total.....				92.96

Ex. car No. —. Initials, —.

Received payment 12, 14, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 95—FREIGHT BILL No. 383.

Port Arthur Route. K. C. Station, 12, 11, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 11, 1901; W. B. No. Tex. 155; car No. 4997; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	67270	14	94.18
Total.....				94.18

Ex. car No. —. Initials, —.

Received payment 12, 13, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 96—FREIGHT BILL No. 379.

Port Arthur Route. K. C. Station, 2, 11, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 11, 1901; W. B. No. Tex. 154; car No. 3915; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	56100	14	78.54
	Total.....			78.54

Ex. car No. 43852. Initials, C. M.

Received payment 12, 13, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, Agent.

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EX. 97—FREIGHT BILL No. 370.

Port Arthur Route. K. C. Station, 12, 11, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 11, 1901; W. B. No. Tex. 153; car No. 3098; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	55340	14	77.48
	Total.....			77.48

Ex. car No. 46360. Initials, C. M.

Received payment 12, 13, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, Agent.

EX. 98—FREIGHT BILL No. 375.

Port Arthur Route. K. C. Station, 12, 11, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 11, 1901; W. B. No. Tex. 152; car No. 7713; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	49250	14	68.95
	Total.....			68.95

Ex. car No. 45232. Initials, C. M.

Received payment 12, 13, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, Agent.

EX. 99—FREIGHT BILL No. 380.

Port Arthur Route. K. C. Station, 12, 11, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date 12, 11, 1901; W. B. No. Tex. 151; car No. 15640; initials, S. T. & S. W.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	67050	14	93.87
	Total			93.87

Ex. car No. 61252. Initials, C. M.

Received payment 12, 13, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 100—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 2, 15, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 15, 1902; W. B. No. S. St. 294; car No. 11243; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
E. D. Fisher Com. Co.	Corn	44000	14	61.60
	Total			61.60

Ex. car No. —. Initials, —.

Received payment 2, 17, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 101—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 2, 15, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 15, 1902; W. B. No. St. 293; car No. 12849; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
E. D. Fisher Com. Co.	Corn	44000	14	61.60
	Total			61.60

Ex. car No. —. Initials, —.

Received payment 2, 17, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 102—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 2, 17, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 15, 1902; W. B. No. St. 292; car No. 3241; initials, P. G.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
E. D. Fisher	Corn	44000	14	61.60
Total.....				61.60

Ex. car No. —. Initials, —.

Received payment 2, 17, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 103—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 2, 15, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 14, 1902; W. B. No. Tx. 166; car No. 11481; initials, K. C. S.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
E. D. Fisher	Corn	44000	14½	63.80
Total.....				63.80

Ex. car No. —. Initials, —.

Received payment 2, 20, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 104—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 2, 15, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 14, 1902; W. B. No. Tx. 165; car No. 4454; initials, P. G.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
E. D. Fisher	Corn	44000	14½	63.80
Total.....				63.80

Alton, J. A., 2, 14, 1753.

Ex. car No. —. Initials, —.

Received payment 2, 20, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

277 EX. 105—FREIGHT BILL No. 972.

Port Arthur Route. K. C. Station, 2, 3, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 1, 1902; W. B. No. Tx. 15; car No. 4899; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	38600	14	54.04
	Total			54.04

Ex. car No. —. Initials, —.

Received payment 2, 3, 1902, subject to an additional charge for storage or demurrage if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 106—FREIGHT BILL No. 972.

Port Arthur Route. K. C. Station, 2, 5, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 1, 1902; W. B. No. Tx. 15; car No. 379; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	37800	14	52.92
	Total			52.92

Ex. car No. 4899. Initials, P. G.

Received payment 2, 3, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 107—FREIGHT BILL No. 749.

Port Arthur Route. Kansas City, Mo., Station, 1, 2, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 1, 2, 1902; W. B. No. Tx. 10; car No. 30052; initials, A. T.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	55360	14	77.50
	Total			77.50

Ex. car No. —. Initials, —.

Received payment 1, 4, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 108—FREIGHT BILL No. 709.

Port Arthur Route. Kansas City, Mo., Station, 1, 2, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Dates, 1, 2, 1902; W. B. No. Tx. 23; car No. 6436; initials, R. I.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	33329	14	54.09
	Total.....			54.09

Ex. car No. —. Initials, —.

Received payment 1, 4, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

278 Ex. 109—FREIGHT BILL No. 748.

Port Arthur Route. K. C. Station, 1, 2, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 2, 1902; W. B. No. Tx. 11; car No. 128196; initials, C. B. & Q.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	48640	14	68.10
	Total.....			68.10

Ex. car No. —. Initials, —.

Received payment 1, 4, 1902, subject to an additional charge for storage or demurrage if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 110—FREIGHT BILL No. 496.

Port Arthur Route. K. C. Station, 1, 2, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 2, 1902; W. B. No. Tx. 8; car No. 3306; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 66896. Initials, Wab.

Received payment 1, 4, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 111—FREIGHT BILL No. 503.

Port Arthur Route. Kansas City, Mo., Station, 1, 2, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 1, 2, 1902; W. B. No. Tex. 4; car No. 20151; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
So. Grain Co.	Corn	54700	14	76.58
Total.....				76.58

Ex. car No. 65816. Initials, Wab.

Received payment 1, 4, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 112—FREIGHT BILL No. 411.

Port Arthur Route. Kansas City, Mo., Station, 1, 11, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Dates, 1, 10, 1902; W. B. No. Tx. 208; car No. 3982; initials, P. G.

Marks.	No. and description of articles.	Weight	Rate.	Amount.
No record.	Oats	48500	14	67.90
Total.....				67.90

Ex. car No. 12744. Initials, I. M. S.

Received payment 1, 4, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 113—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 15, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 4, 1902; W. B. No. Tx. 279; car No. 11425; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harronn Com. Co.	Corn	55500	14	77.70
Total.....				77.70

Ex. car No. —. Initials, —.

Received payment 1, 15, 1902, subject to an additional charge for storage or demurrage if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 114—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 15, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 14, 1902; W. B. No. Tx. 273; car No. 4373; initials, P. G.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Harrohn Com. Co.	Oats	44000	14	61.60
Total.....				61.60

Ex. car No. 4899. Initials, —.

Received payment 1, 15, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 115—FREIGHT BILL No. —.

Port Arthur Route. Kansas City, Mo., Station, 1, 15, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 1, 14, 1902; W. B. No. Tx. 272; car No. 4452; initials, P. G.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Harrohn Com. Co.	Oats	44000	14	61.60
Total.....				61.60

Ex. car No. —. Initials, —.

Received payment 1, 15, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 116—FREIGHT BILL No. —.

Port Arthur Route. Kansas City, Mo., Station, 1, 15, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Station.

Dates, 1, 14, 1902; W. B. No. St. 223; car No. 4105; initials, P. G.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Harrohn Com. Co.	Corn	55000	14	77.00
Total.....				77.00

Ex. car No. —. Initials, —.

Received payment 1, 15, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 117—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 15, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 14, 1902; W. B. No. St. 219; car No. 3730; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Oats	44000	14	61.60
Total.....				61.60

Ex. car No. —. Initials, —.

Received payment 1, 15, 1902, subject to an additional charge for storage or demurrage if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 118—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 15, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 14, 1902; W. B. No. Tx. 76; car No. 11244; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	55000	14	77.00
Total.....				77.00

Ex. car No. —. Initials, —.

Received payment 1, 15, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 119—FREIGHT BILL No. —.

Port Arthur Route. Kansas City, Mo., Station, 1, 13, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 1, 11, 1902; W. B. No. Tx. 229; car No. 4771; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Oats	48000	14	67.20
Total.....				67.20

Ex. car No. —. Initials, —.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 120—FREIGHT BILL No. —.

Port Arthur Route. Kansas City, Mo., Station, 1, 13, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Dates, 1, 11, 1902; W. B. No. Tx. 228; car No. 477; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	44000	14	61.60
Total.....				61.60

Ex. car No. —. Initials, —.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

281 EX. 121—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 13, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 11, 1902; W. B. No. Tx. 227; car No. 4722; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Oats	48000	14	67.20
Total.....				67.20

Ex. car No. —. Initials, —.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 122.—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 13, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 11, 1902; W. B. No. Tx. 226; car No. 3981; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	56000	14	78.40
Total.....				78.40

Ex. car No. —. Initials, —.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 123—FREIGHT BILL No. —.

Port Arthur Route. Kansas City, Mo., Station, 1, 13, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 1, 11, 1902; W. B. No. St. 172; car No. 4295; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	55000	14	77.00
Total.....				77.00

Ex. car No. —. Initials, —.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 124—FREIGHT BILL No. —.

Port Arthur Route. Kansas City, Mo., Station, 1, 13, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Dates, 1, 11, 1902; W. B. No. St. 171; car No. 3391; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haronn Com. Co.	Corn	55000	14	77.00
Total.....				77.00

Ex. car No. —. Initials, —.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 125—FREIGHT BILL No. 704.

Port Arthur Route. K. C. Station, 1, 11, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 10, 1902; W. B. No. Tx. 216; car No. 4821; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
Total.....				92.40

Ex. car. No. 1042. Initials, O. K.

Received payment 2, 3, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 126—FREIGHT BILL NO. 735.

Port Arthur Route. K. C. Station, 1, 11, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 10, 1902; W. B. No. Tx. 214; car No. 11479; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	34000	14	47.60
	Total.....			47.60

Ex. car No. 48594. Initials, C. M.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 127—FREIGHT BILL NO. 735.

Port Arthur Route. K. C. Station, 1, 11, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 1, 10, 1902; W. B. No. Tx. 213; car No. 4119; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	33100	14	46.34
	Total.....			46.34

Ex. car No. 48594. Initials, C. M.

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 128—FREIGHT BILL NO. —.

Port Arthur Route. Kansas City Station, 1, 11, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Dates, 1, 10, 1902; W. B. No. Tx. 212; car No. 7611; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 61509. Initials, Wab.

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

283 EX. 129—FREIGHT BILL No. 651.

Port Arthur Route. K. C. Station, 1, 11, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 10, 1902; W. B. No. Tx. 211; car No. 3899; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
	Total			92.40

Ex. car No. 1016. Initials, C. E. & I.

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 130—FREIGHT BILL No. 732.

Port Arthur Route. K. C. Station, 1, 11, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 10, 1902; W. B. No. Tx. 209; car No. 14160; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Corn	44770	14	62.68
	Total			62.68

Ex. car No. 17774. Initials, C. M.

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 131—FREIGHT BILL No. —.

Port Arthur Route. K. C., Mo., Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 1, 10, 1902; W. B. No. Tx. 206; car No. 3632; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harronn Com. Co.	Corn	56000	14	78.40
	Total			78.40

Initials, —.

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 132—FREIGHT BILL No. —.

Port Arthur Route. K. C., Mo., Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Dates, 1, 10, 1902; W. B. No. Tx. 194; car No. 2895; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harrohn Com. Co.	Oats	44000	14	61.60
Total.....				61.60

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 133—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 10, 1902; W. B. No. Tx. 193; car No. 387; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Hartoun Com. Co.	Oats	44000	14	61.60
Total.....				61.60

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 134—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Station.

Date, 1, 10, 1902; W. B. No. Tx. 192; car No. 12989; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Oats	44000	14	61.60
Total.....				61.60

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 135—FREIGHT BILL No. —.

Port Arthur Route. K. C., Mo., Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 1, 10, 1902; W. B. No. Tx. 191; car No. 3387; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Oats	44000	14	61.60
	Total.....			61.60

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 136—FREIGHT BILL No. —.

Port Arthur Route. Kansas City, Mo., Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Dates, 1, 10, 1902; W. B. No. Tx. 190; car No. 13887; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Oats	44000	14	61.60
	Total.....			61.60

Ex. car No. —. Initials, —.

Received payment 1, 11, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 137—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 2, 28, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 27, 1902; W. B. No. Tx. 364; car No. 4683; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Oats	48000	14	67.20
	Total.....			67.20

Ex. car No. —. Initials, —.

Received payment 2, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 138—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 2, 28, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 27, 1902; W. B. No. Tx. 363; car No. 4507; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Oats	48000	14	67.20
	Total.....			67.20

Received payment 2, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 139—FREIGHT BILL No. 746.

Port Arthur Route. K. C., Mo., Station, 2, 15, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 2, 14, 1902; W. B. No. Tx. 163; car No. 5672; initials, R. I.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Oats	39600	14	55.44
	Total.....			55.44

Ex. car No. —. Initials, —.

Received payment 2, 15, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 140—FREIGHT BILL No. 616.

Port Arthur Route. Kansas City, Mo., Station, 1, 27, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Dates, 1, 27, 1902; W. B. No. Tx. 505; car No. 4992; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Oats	54550	14	76.65
	Total.....			76.65

Ex. car No. 60397. Initials, W.

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 141—FREIGHT BILL No. 622.

Port Arthur Route. K. C. Station, 1, 27, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 27, 1902; W. B. No. Tx. 496; car No. 14215; Initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Oats	51800	14	72.52
	Total.....			72.52

Ex. car No. 67248. Initials, W.

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 142—FREIGHT BILL No. 639.

Port Arthur Route. K. C. Station, 1, 27, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 27, 1902; W. B. No. Tx. 495; car No. 13868; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Oats	59800	14	83.72
	Total.....			83.72

Ex. car No. 60632. Initials, W. A. B.

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 143—FREIGHT BILL No. 532.

Port Arthur Route. K. C., Mo., Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 1, 24, 1902; W. B. No. Tx. 458; car No. 4748; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Oats	45000	14	63.00
	Total.....			63.00

Ex. car No. 1000. Initials, O. S. E. B.

Received payment 1, 25, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 144—FREIGHT BILL No. 614.

Port Arthur Route. Kansas City, Mo., Station, 1, 24, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Dates, 1, 23, 1902; W. B. No. Tx. 433; car No. 11554; initials, S. W.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore St. & E. Co.	Oats	40200	14	56.28
Total.....				56.28

Ex. car No. 4183. Initials, B. C. R. & N.

Received payment 1, 24, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, Agent.

287 EX. 145—FREIGHT BILL No. 534.

Port Arthur Route. K. C. Station, 1, 13, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 11, 1902; W. B. No. Tx. 242; car No. 13986; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Oats	52100	14	72.94
Total.....				72.94

Ex. car No. 1024. Initials, O. St. L.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, Agent.

EX. 146—FREIGHT BILL No. 676.

Port Arthur Route. K. C. Station, 1, 8, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 7, 1902; W. B. No. Tx. 127; car No. 66064; initials, C. M.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	63400	14	90.02
Total.....				90.02

Ex. car No. —. Initials, —.

Received payment 1, 9, 1902, subject to an additional charge for storage or demurrage, if property not removed in forty-eight (48) hours after placing.

E. PHENNEGE, Agent.

EX. 147—FREIGHT BILL No. 515.

Port Arthur Route. K. C. Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Tex., Station.

Date, 12, 30, 1901; W. B. No. Tx. 454; car No. 11256; initials, Ill. Cent.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	30283	14	42.40
	Total.....			42.40

Ex. car No. 9078. Initials, O. St. L.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 148—FREIGHT BILL No. 394.

Port Arthur Route. K. C. Station, 12, 21, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 21, 1901; W. B. No. Tx. 331; car No. 10404; initials, S. W.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	44000	14	61.60
	Total.....			61.60

Ex. car No. 7419. Initials, W.

Received payment 12, 26, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

288 EX. 149—FREIGHT BILL No. 386.

Port Arthur Route. K. C. Station, 12, 12, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 12, 1901; W. B. No. Tex. 176; car No. 4783; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	41600	14	58.24
	Total.....			58.24

Ex. car No. 33732. Initials, C. M.

Received payment 2, 16, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 150—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 8, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 7, 1902; W. B. No. Tx. 126; car No. 44617; initials, P. G.

No. and description

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	60000	14	84.00
	Total.....			84.00

Ex. car No. —. Initials, —.

Received payment 1, 8, 1902, subject to an additional charge for storage or demurrage, if property not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 151—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 8, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Tex., Station.

Date, 1, 7, 1902; W. B. No. Tx. 125; car No. 12789; initials, K. C. S.

No. and description

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	56000	14	78.40
	Total.....			78.40

Ex. car No. —. Initials, —.

Received payment 1, 8, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 152—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 8, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 7, 1902; W. B. No. Tx. 124; car No. 3475; initials, P. G.

No. and description

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
— — —	Corn	56000	14	78.40
	Total.....			78.40

Ex. car No. —. Initials, —.

Received payment 1 8, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

289 EX. 153—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 8, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 7, 1902; W. B. No. Tx. 123; car No. 3827; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	56000	14	78.40
Total.....				78.40

Ex. car No. —. Initials, —.

Received payment 1, 8, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 154—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 8, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 7, 1902; W. B. No. Tx. 122; car No. 12797; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	56000	14	78.40
Total.....				78.40

Ex. car No. —. Initials, —.

Received payment 1, 8, 1902, subject to an additional charge for storage or demurrage, if property not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 155—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 8, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Tex., Station.

Date, 1, 7, 1902; W. B. No. Tx. 121; car No. 3971; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	56000	14	78.40
Total.....				78.40

Ex. car No. —. Initials, —.

Received payment 1, 8, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 156—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 102; car No. 4359; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	66000	14	92.40
Total.....				92.40

Ex. car No. —. Initials, —.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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Ex. 157—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 88; car No. 412; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	60000	14	84.00
Total.....				84.00

Ex. car No. —. Initials, —.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 158—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 87; car No. 14056; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	60000	14	84.00
Total.....				84.00

Ex. car No. —. Initials, —.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 159—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Tex., Station.

Date, 1, 6, 1902; W. B. No. Tx. 86; car No. 3445; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	60000	14	84.00
	Total.....			84.00

Ex. car No. —. Initials, —.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 160—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 85; car No. 14224; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	60000	14	84.00
	Total.....			84.00

Ex. car No. —. Initials, —.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 161—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 84; car No. 343; initials, Pg.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	60000	14	84.00
	Total.....			84.00

Ex. car No. —. Initials, —.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 162—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 83; car No. 4357; initials, P. G.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	60000	14	84.00
Total.....				84.00

Ex. car No. —. Initials, —.

Received payment, 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 163—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr

For transportation of freight from K. C. to Texarkana, Tex., Station.

Date, 1, 6, 1902; W. B. No. Tx. 82; car No. 12365; initials, K. C. S.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	60000	14	84.00
Total.....				84.00

Ex. car No. —. Initials, —.

Received payment, 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 164—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Station.

Date, 1, 6, 1902, W. B. No. Tx. 81; car No. 13934; initials, K. C. S.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	60000	14	84.00
Total.....				84.00

Ex. car No. —. Initials, —.

Received payment, 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 165—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 80; car No. 12646; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	60000		84.00
	Total.....			84.00

Ex. car No. —. Initials, —.

Received payment, 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 166—FREIGHT BILL No. 568.

Port Arthur Route. K. C. Station, 1, 6, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 4, 1902; W. B. No. Tx. 58; car No. 12393; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 1066. Initials, O. St. L.

Received payment, 1, 6, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 167—FREIGHT BILL No. 578.

Port Arthur Route. K. C. Station, 1, 6, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Tex., Station.

Date 1, 4, 1902; W. B. No. Tx. 60; car No. 303; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 1079. Initials, O. St. L.

Received payment, 1, 6, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 168—FREIGHT BILL No. 48.

Port Arthur Route. K. C. Station, 1, 6, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Station.
Date, 1, 3, 1902; W. B. No. Tx. 40; car No. 3832; initials, P. G.

No. and description		Weight.	Rate.	Amount.
Marks.	of articles.			
B. F. Hargis	Corn	55000	14	77.00
Total.....				77.00
Ex. car No. 61604. Initials, W. A. B.				

Received payment, 1, 6, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.
E. PHENNEGE, *Agent*.

293 EX. 169—FREIGHT BILL No. 8.

Port Arthur Route. K. C. Station, 1, 6, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.
Date, 1, 4, 1902; W. B. No. Tx. 63; car No. 12536; initials, K. C. S.

No. and description		Weight.	Rate.	Amount.
Marks.	of articles.			
Haroun Com. Co.	Oats	45000	14	63.00
Total.....				63.00
Ex. car No. —. Initials, —.				

Received payment, 1, 6, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.
E. PHENNEGE, *Agent*.

EX. 170—FREIGHT BILL No. 8.

Port Arthur Route. K. C. Station, 1, 6, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.
Date, 1, 4, 1902; W. B. No. Tx. 64; car No. 12424; initials, K. C. S.

No. and description		Weight.	Rate.	Amount.
Marks.	of articles.			
Haroun Com Co.	Oats	45000	14	63.00
Total.....				63.00
Ex. car No. —. Initials, —.				

Received payment, 1, 6, 1902, subject to an additional charge for storage or demurrage, if property not removed in forty-eight (48) hours after placing.
E. PHENNEGE, *Agent*.

EX. 171—FREIGHT BILL No. 649.

Port Arthur Route. K. C. Station, 1, 3, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Tex., Station.

Date, 1, 3, 1902; W. B. No. Tx. 39; car No. 8432; initials, C. G. W.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	44000	14	61.60
	Total.....			61.60

Ex. car No. —. Initials, —.

Received payment, 1, 6, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 172—FREIGHT BILL No. 530.

Port Arthur Route. K. C. Station, 1, 3, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Station.

Date, 1, 3, 1902; W. B. No. Tx. 40; car No. 3832; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
	Corn	62700	14	87.78
	Total.....			87.78

Ex. car No. 1241. Initials, O. S.

Received payment, 1, 6, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 173—FREIGHT BILL No. 482.

Port Arthur Route. K. C. Station, 1, 3, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 3, 1902; W. B. No. Tx. 41; car No. 15006; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
So. Grain Co.	Corn	41700	14	58.38
	Total.....			58.38

Ex. car No. 21654. Initials, —.

Received payment, 1, 6, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 174—FREIGHT BILL No. 468.

Port Arthur Route. K. C. Station, 1, 3, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 3, 1902; W. B. No. Tx. 46; car No. 13242; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Gr. Ele. Co.	Corn	27800	14	38.92
	Total.....			38.92

Ex. car No. 60615. Initials, W. A. B.

Received payment, 1, 6, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 175—FREIGHT BILL No. 469.

Port Arthur Route. K. C. Station, 1, 3, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Tex., Station.

Date, 1, 3, 1902; W. B. No. Tex. 46; car No. 13242; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Gr. Ele. Co.	Corn	38200	14	38.92
	Total.....			38.92

Ex. car No. 60615. Initials, W. A. B.

Received payment, 1, 6, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 176—FREIGHT BILL No. 438.

Port Arthur Route. K. C. Station, 1, 3, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Station.

Date, 1, 3, '02; W. B. No. Tx. 38; car No. 3024; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 1117. Initials, O. S.

Received payment, 1, 6, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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Ex. 177—FREIGHT BILL No. 344.

Port Arthur Route. K. C. Station, 1, 3, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 3, 1902; W. B. No. Tx. 43; car No. 7643; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
B. F. Hargis & Co.	Corn	38900	14	54.46
	Total.....			54.46

Ex. car No. 68499. Initials, W. A. B.

Received payment 1, 6, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 178—FREIGHT BILL No. 344.

Port Arthur Route. K. C. Station, 1, 3, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 3, 1902; W. B. No. Tx. 42; car No. 2443; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
B. F. Hargis & Co.	Corn	34500	14	48.30
	Total.....			48.30

Ex. car No. 68499. Initials, W. A. B.

Received payment 1, 6, 1902, subject to an additional charge for storage or demurrage, if property not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 179—FREIGHT BILL No. 437.

Port Arthur Route. K. C. Station, 1, 3, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Tex., Station.

Date, 1, 3, 1902; W. B. No. Tex. 44; car No. 4052; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & Ele. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 1444. Initials, O. S.

Received payment 1, 6, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 180—FREIGHT BILL No. 504.

Port Arthur Route. K. C. Station, 1, 2, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 2, 1902; W. B. No. Tex. 5; car No. 14088; initials, K. G. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
So. Grain Co.	Corn	60000	14	84.00
Total.....				84.00

Ex. car No. 66253. Initials, W. A. B.

Received payment 1, 4, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 181—FREIGHT BILL No. 7.

Port Arthur Route. K. C. Station, 1, 2, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 2, 1902; W. B. No. Tx. 20; car No. 3190; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	66000	14	92.40
Total.....				92.40

Ex. car No. —. Initials, —.

Received payment 1, 4, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 182—FREIGHT BILL No. 5.

Port Arthur Route. K. C. Station, 12, 31, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 31, 1901; W. B. No. Tex. 469; car No. 4343; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	56000	14	78.40
Total.....				78.40

Ex. car No. —. Initials, —.

Received payment 1, 2, 1902, subject to an additional charge for storage or demurrage, if property not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 183—FREIGHT BILL No. 5.

Port Arthur Route. K. C. Station, 2, 31, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Tex., Station.

Date, 12, 31, 1901; W. B. No. Tex. 470; car No. 3327; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	56000	14	78.40
Total.....				78.40

Ex. car No. —. Initials, —.

Received payment 1, 2, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, Agent.

Ex. 184—FREIGHT BILL No. 471.

Port Arthur Route. K. C. Station, 12, 17, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 17, 1901; W. B. No. Tex. 242; car No. 2111; initials, O. K.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore G. Ele. Co.	Oats	50000	14	70.00
Total.....				70.00

Ex. car No. —. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, Agent.

297 Ex. 185—FREIGHT BILL No. 447.

Port Arthur Route. K. C. Station, 12, 18, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 17, 1901; W. B. No. Tex. 241; car No. 2034; initials, O. K. C. O. E.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	S.K.D. Oats	45000	14	63.00
Total.....				—

Ex. car No. —. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, Agent.

EX. 186—FREIGHT BILL No. 469.

Port Arthur Route. K. C. Station, 12, 17, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, to Texarkana, Tx., Station.

Date, 12, 17, 1901; W. B. No. Tex. 240; car No. 2053; initials, O. K.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & Ele. Co.	Oats	50000	14	70.00
	Total.....			70.00

Ex. car No. —. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight hours after placing.

E. PHENNEGE, *Agent*.

EX. 187—FREIGHT BILL No. 446.

Port Arthur Route. Kansas City, Mo., Station.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 12, 17, 1901; W. B. No. 230; car No. 97292; initials B. & O.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	40000	14	56.00
	Total.....			56.00

Ex. car No. —. Initials, —.

Received payment 12, 26, 1901, subject to additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 188—FREIGHT BILL No. 408.

Port Arthur Route. K. C., Mo., Station, 12, 17, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 16, 1901; W. B. No. Tex. 21; car No. 13998; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	S. K. D. corn	66600	14	93.24
	Total.....			93.24

Ex. car No. 64999. Initials, W. A. B.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 189—FREIGHT BILL No. 663.

Port Arthur Route. K. C. Station, 12, 31, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 30, 1901; W. B. No. Tx. 441; car No. -082; initials, O. K. C. & E.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
Total.....				92.40

Ex. car No. —. Initials, —.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 190—FREIGHT BILL No. 548.

Port Arthur Route. K. C. Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City to Texarkana, Tx., Station.

Date, 12, 30, 1901; W. B. No. Tx. 451; car No. 7789; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	41300	14	57.82
Total.....				57.82

Ex. car No. 10606. Initials, Wabash.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight hours after placing.

E. PHENNEGE, *Agent*.

EX. 191—FREIGHT BILL No. 547.

Port Arthur Route. Kansas City, Mo., Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 12, 30, 1901; W. B. No. Tx. 453; car No. 4779; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	42600	14	59.64
Total.....				59.64

Ex. car No. 50553. Initials, W. A. B.

Received payment 12, 31, 1901, subject to additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 192—FREIGHT BILL No. 486.

Port Arthur Route. K. C., Mo., Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 30, 1901; W. B. No. Tx. 450; car No. 20221; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & Ele. Co.	Corn	61400	14	85.96
Total.....				85.96

Ex. car No. 68397. Initials, W. A. B.

Received payment 1, 2, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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Ex. 193—FREIGHT BILL No. 485.

Port Arthur Route. K. C. Station, 12, 31, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 30, 1901; W. B. No. Tx. 444; car No. 13390; initials, F. W.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	45920	14	64.29
Total.....				64.29

Ex. car No. —. Initials, —.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 194—FREIGHT BILL No. 502.

Port Arthur Route. K. C. Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City to Texarkana, Tx., Station.

Date, 12, 30, 1901; W. B. No. Tx. 448; car No. 20095; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
So. F. Grain Co.	Corn	56400	14	78.96
Total.....				78.96

Ex. car No. 68118. Initials, W. A. B.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight hours after placing.

E. PHENNEGE, *Agent*.

EX. 195—FREIGHT BILL No. 466.

Port Arthur Route. Kansas City, Mo., Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date 12, 30, 1901; W. B. No. Tx. 455; car No. 20218; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	42400	14	59.36
	Total.....			59.36

Ex. car No. 1294. Initials, O. St. L.

Received payment 12, 31, 1901, subject to additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 196—FREIGHT BILL No. 466.

Port Arthur Route. K. C., Mo., Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 30, 1901; W. B. No. Tx. 456; car No. 5524; initials, S. W.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	28900	14	40.46
	Total.....			40.46

Ex. car No. 1294. Initials, O. St. L.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 197—FREIGHT BILL No. 475.

Port Arthur Route. K. C. Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 30, 1901; W. B. No. Tx. 458; car No. 20089; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	44000	14	61.60
	Total.....			61.60

Ex. car No. 50594. Initials, W. A. B.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 198—FREIGHT BILL No. 458.

Port Arthur Route. K. C. Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, to Texarkana, Tx., Station.

Date, 12, 30, 1901; W. B. No. Tx. 452; car No. 14592; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	63000	14	88.20
Total.....				88.20

Ex. car No. 61667. Initials, W. A. B.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight hours after placing.

E. PHENNEGE, *Agent*.

EX. 199—FREIGHT BILL No. 455.

Port Arthur Route. Kansas City, Mo., Station, 12, 31, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 12, 30, 1901; W. B. No. Tx. 442; car No. 3570; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
D. F. Hargis.	Corn	44000	14	61.60
Total.....				61.60

Ex. car No. 23647. Initials, E. W.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 200—FREIGHT BILL No. 419.

Port Arthur Route. K. C., Mo., Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 30, 1901; W. B. No. Tx. 449; car No. 14,197; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & Ele. Co.	Corn	56900	14	79.60
Total.....				79.60

Ex. car No. 67928. Initials, W. A. B.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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Ex. 201—FREIGHT BILL No. 477.

Port Arthur Route. K. C. Station, 12, 28, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 28, 1901; W. B. No. Tx. 421; car No. 2051; initials, O. K. C. E.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
So. Grain Co.	Corn	57250	14	80.15
	Total.....			80.15

Ex. car No. —. Initials, —.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 202—FREIGHT BILL No. 440.

Port Arthur Route. K. C. Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City to Texarkana, Tx., Station.

Date, 12, 28, 1901; W. B. No. Tx. 415; car No. 4696; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	60000	14	92.40
	Total.....			92.40

Ex. car No. 65217. Initials, W. A. B.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight hours after placing.

E. PHENNEGE, *Agent*.

Ex. 203—FREIGHT BILL No. 439.

Port Arthur Route. Kansas City, Mo., Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana, Tx., Station.

Date, 12, 28, 1901; W. B. No. Tx. 414; car No. 3227; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 66809. Initials, W. A. B.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 204—FREIGHT BILL No. 449.

Port Arthur Route. K. C., Mo., Station, 12, 28, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 28, 1901; W. B. No. Tx. 419; car No. 20166; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	48000	14	67.20
Total.....				67.20
Ex. car No. 27225. Initials, W. A. B.				

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 205—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 28, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 27, 1902; W. B. No. Tx. 513; car No. 271; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Oats	44000	14	61.60
Total.....				61.60
Ex. car No. —. Initials, —.				

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 206—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 28, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 27, 1902; W. B. No. Tx. 512; car No. 5011; initials P. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Oats	44000	14	61.60
Total.....				61.60
Ex. car No. —. Initials, —.				

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 207—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 28, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 27, 1902; W. B. No. Tx. 511; car No. 3494; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Oats	44000	14	61.60
	Total.....			61.60

Ex. car No. —. Initials, —.

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 208—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 28, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 27, 1902; W. B. No. Tx. 510; car No. 3297; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Oats	44940	14	62.91
	Total.....			62.91

Ex. car No. —. Initials, —.

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 209—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 28, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 27, 1902; W. B. No. Tx. 509; car No. 3805; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	44000	14	61.60
	Total.....			61.60

Ex. car No. —. Initials, —.

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 210—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 28, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 27, 1902; W. B. No. Tx. 508; car No. 3908; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	44000	14	61.60
Total.....				61.60
Ex. car No. —. Initials, —.				

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 211—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 28, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 27, 1902; W. B. No. Tx. 507; car No. 4308; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	44000	14	63.80
Total.....				63.80
Ex. car No. —. Initials, —.				

Received payment 1, 20, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 212—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 28, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 27, 1902; W. B. No. Tx. 566; car No. 14130, initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	44000	14	63.80
Total.....				63.80
Ex. car No. —. Initials, —.				

Received payment 1, 20, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

304 EX. 213—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 28, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 27, 1902; W. B. No. Tx. 503; car No. 11638; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	44000	14	61.60
	Total.....			61.60

Ex. car No. —. Initials, —.

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 214—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 25, 1902; W. B. No. Tx. 474; car No. 4202; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	60000	14½	87.00
	Total.....			87.00

Ex. car No. —. Initials, —.

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 215—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 25, 1902; W. B. No. Tx. 473; car No. 3159; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	60000	14½	87.00
	Total.....			87.00

Ex. car No. —. Initials, —.

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 216—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 25, 1902; W. B. No. Tex. 472; car No. 3246; initials, P. G.

Marks.		No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.		Corn	60000	14½	87.00
Total.....					87.00

Ex. car No. —. Initials, —.

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 217—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 25, 1902; W. B. No. Tex. 471; car No. 13257; initials, K. C. S.

Marks.		No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.		Corn	60000	14½	87.00
Total.....					87.00

Ex. car No. —. Initials, —.

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 218—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 25, 1902; W. B. No. Tex. 470; car No. 3353; initials, P. G.

Marks.		No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.		Corn	60000	14½	87.00
Total.....					87.00

Ex. car No. —. Initials, —.

Received payment 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 219—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 25, 1902; W. B. No. Tex. 479; car No. 3669; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	60000	14	84.00
	Total.....			84.00
Ex. car No. —. Initials, —.				

Received payment 1, 27, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 220—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 25, 1902; W. B. No. Tex. 478; car No. 4006; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	60000	14	84.00
	Total.....			84.00
Ex. car No. —. Initials, —.				

Received payment 1, 27, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 221—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 25, 1902; W. B. No. Tex. 477; car No. 4293; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	60000	14	84.00
	Total.....			84.00
Ex. car No. —. Initials, —.				

Received payment 1, 27, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 222—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 25, 1902; W. B. No. Tx. 470; car No. 4614; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	60000	14	84.00
Total.....				84.00
Ex. car No. —. Initials, —.				

Received payment 1, 27, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 223—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 25, 1902; W. B. No. Tex. 475; car No. 12132, initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	60000	14	84.00
Total.....				84.00
Ex. car No. —. Initials, —.				

Received payment 1, 27, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 224—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 25, 1902; W. B. No. Tex. 469; car No. 7549; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Oats	43060	14	60.28
Total.....				60.28
Ex. car No. —. Initials, —.				

Received payment 1, 27, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 225—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 22, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 22, 1902; W. B. No. Tx. 423; car No. 3338; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Oats	51680	14	72.35
	Total.....			72.35

Ex. car No. —. Initials, —.

Received payment 1, 23, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, Agent.

EX. 226—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 22, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 22, 1902; W. B. No. Tx. 422; car No. 11180; initials,
K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	44800	14	62.72
	Total.....			62.72

Ex. car No. —. Initials, —.

Received payment 1, 23, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, Agent.

EX. 227—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 20, 1902.

To The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 20, 1902; W. B. No. Tx. 387; car No. 4854; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Oats	55000	14½	79.75
	Total.....			79.75

Ex. car No. —. Initials, —.

Received payment 1, 21, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, Agent.

Ex. 228—FREIGHT BILL No. 662.

Port Arthur Route. K. C. Station, 1, 18, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 17, 1902; W. B. No. Tx. 350; car No. 3082; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
Total.....				92.40

Ex. car No. 1214. Initials, O. St. L.

Received payment 1, 18, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

308 Ex. 229—FREIGHT BILL No. 516.

Port Arthur Route. K. C. Station, 1, 18, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 17, 1902; W. B. No. Tx. 343; car No. 2087; initials, O. K. C. & E.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Oats	54500	14	76.30
Total.....				76.30

Ex. car No. —. Initials, —.

Received payment 1, 18, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 230—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 30, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 29, 1902; W. B. No. Tx. 554; car No. 438; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	44000	14	61.60
Total.....				61.60

Ex. car No. —. Initials, —.

Received payment 1, 30, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 231—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 30, 1902.

To The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 29, 1902; W. B. No. Tx. 555; car No. 12088; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	44000	14	61.60
Total.....				61.60

Ex. car No. —. Initials, —.

Received payment 1, 30, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 232—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 30, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 29, 1902; W. B. No. Tx. 552; car No. 452; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	44000	14	61.60
Total.....				61.60

Ex. car No. —. Initials, —.

Received payment 1, 30, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 233—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 30, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 29, 1902; W. B. No. Tx. 551; car No. 4583; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Oats	4800	14	67.20
Total.....				67.20

Ex. car No. —. Initials, —.

Received payment 1, 30, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 234—FREIGHT BILL NO. —.

Port Arthur Route. K. C. Station, 1, 30, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 29, 1902; W. B. No. Tx. 548; car No. 3122; initials, P. G.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Oats	48000	14	67.20
Total.....				67.20

Ex. car No. —. Initials, —.

Received payment 1, 30, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 235—FREIGHT BILL NO. —.

Port Arthur Route. K. C. Station, 1, 29, 1902.

To The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 28, 1902; W. B. No. Tx. 532; car No. 13273; initials, K. C. S.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	44000	14	61.60
Total.....				61.60

Ex. car No. —. Initials, —.

Received payment 1, 29, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 236—FREIGHT BILL NO. —.

Port Arthur Route. K. C. Station, 1, 29, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 28, 1902; W. B. No. Tx. 531; car No. 13419; initials, K. C. S.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	44000	14	61.60
Total				61.60

Ex. car No. —. Initials, —.

Received payment 1, 29, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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Ex. 237—FREIGHT BILL No. 538.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 25, 1902; W. B. No. Tx. 485; car No. 2156; initials, O. K. C. E.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. —. Initials, —.

Received payment 1, 27, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 238—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 2, 15, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 14, 1902; W. B. No. Tx. 167; car No. 12192; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
E. D. Fisher	Corn	44000	14	61.60
Kingsley	Total.....			61.60

Ex. car No. —. Initials, —.

Received payment 2, 15, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 239—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 2, 15, 1902.

To The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 14, 1902; W. B. No. Tx. 164; car No. 11537; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
E. D. Fisher	Corn	44000	14	61.60
	Total.....			61.60

Ex. car No. —. Initials, —.

Received payment 2, 15, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 240—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 2, 13, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 12, 1902; W. B. No. Tx. 233; car No. 14263; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
E. D. Fisher	Corn	56000	14	78.40
Total.....				78.40
Ex. car No. —. Initials, —.				

Received payment 2, 13, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

311 EX. 241—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 2, 13, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana, Station.

Date, 2, 12, 1902; W. B. No. S. T. 232; car No. 13836; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
E. D. Fisher.	Corn	56000	14½	81.20
Total.....				81.20
Ex. car No. —. Initials, —.				

Received payment 2, 13, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 242—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 2, 13, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 12, 1902; W. B. No. 232; car No. 14169; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
E. D. Fisher.	Corn	44000	14	61.60
Total.....				61.60
Ex. car No. —. Initials, —.				

Received payment 2, 13, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 243—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 2, 13, 1902.

To The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 22, 1902; W. B. No. S. T. 230; car No. 451; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
E. D. Fisher.	Corn	44000	14½	63.80
	Total.....			63.80

Ex. car No. —. Initials, —.

Received payment 2, 13, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 244—FREIGHT BILL No. 556.

Port Arthur Route. K. C. Station, 1, 31, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 30, 1902; W. B. No. Tx. 573; car No. 3329; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 67977. Initials, W. A. B.

Received payment, 2, 1, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

312 EX. 245—FREIGHT BILL No. 831.

Port Arthur Route. K. C. Station, 1, 31, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 30, 1902; W. B. No. Tx. 532; car No. 3021; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	63400	14	88.76
	Total.....			88.76

Ex. car No. 1346. Initials, O. St. L.

Received payment, 2, 1, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 246—FREIGHT BILL No. 657.

Port Arthur Route. K. C. Station, 1, 27, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 27, 1902; W. B. No. Tx. 497; car No. 410; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E.	Corn	66000	14	92.40
Total.....				92.40

Ex. car No. 1189. Initials, O. St. L.

Received payment, 1, 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 247—FREIGHT BILL No. 699.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 24, 1902; W. B. No. Tx. 457; car No. 31342; initials, Son.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Oats	46200	14	64.68
Total.....				64.68

Ex. car No. 8051. Initials, St. L. & I. M.

Received payment, 1, 25, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 248—FREIGHT BILL No. 773.

Port Arthur Route. K. C. Station, 1, 25, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 24, 1902; W. B. Tx. 456; car No. 13395; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Oats	43600	14	61.04
Total.....				61.04

Ex. car No. 1010. Initials, K. C. F. S. & M.

Received payment, 1, 25, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

313 Ex. 249—FREIGHT BILL No. 656.

Port Arthur Route. K. C. Station.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 23, 1902; W. B. No. Tx. 442; car No. 152; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 67584. Initials, W. A. B.

Received payment, 1, 24, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 250—FREIGHT BILL No. 523.

Port Arthur Route. K. C. Station, 1, 23, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 22, 1902; W. B. No. Tx. 419; car No. 13022; initials, C. G. W.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	63293	14	88.61
	Total.....			88.61

Ex. car No. —. Initials, —.

Received payment, 1, 23, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 251—FREIGHT BILL No. 555.

Port Arthur Route. K. C. Station, 1, 20, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 20, 1902; W. B. No. Tx. 381; car No. 4177; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 67487. Initials, W. A. B.

Received payment, 1, 21, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 252—FREIGHT BILL No. 612.

Port Arthur Route. K. C. Station, 1, 20, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 20, 1902; W. B. No. Tx. 380; car No. 3863; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 67560. Initials, W.

Received payment, 1, 21, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 253—FREIGHT BILL No. 616.

Port Arthur Route. K. C. Station, 1, 18, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 18, 1902; W. B. No. Tx. 311; car No. 3254; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. and Ele. Co.	Oats	30500	14	42.70
	Total.....			42.70

Ex. car No. 67020. Initials W. A. B.

Received payment, 1, 21, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 254—FREIGHT BILL No. 696.

Port Arthur Route. K. C. Station, 1, 17, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 17, 1902; W. B. No. Tx. 312; car No. 7016; initials, G. H. S. A.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Oats	36000	14	50.40
	Total.....			50.40

Ex. car. No. 67020. Initials, W. A. B.

Received payment, 1, 21, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 255—FREIGHT BILL No. 589.

Port Arthur Route. K. C. Station, 1, 15, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 14, 1902; W. B. No. Tx. 281; car No. 2188; initials, O. K. C. & E.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & El. Co.	Oats	60000	14	84.00
Total.....				84.00

Ex. car No. —. Initials, —.

Received payment, 1, 15, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 256—FREIGHT BILL No. 479.

Port Arthur Route. K. C. Station, 1, 22, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 26, 1901; W. B. No. S. T. 405; car No. 5004; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
W. S. Nicholson & Co.	Bex Corn	44000	14	61.60
Total.....				6½ pd.

Ex. car No. 26388. 9072. Initials, C. S.

Received payment, 1, 23, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

315 EX. 257—FREIGHT BILL No. 390.

Port Arthur Route. K. C. Station, 12, 17, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 26, 1901; W. B. No. Tex. 218; car No. 2008; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
B. F. Hargis Gr. Co.	Skd. corn	55150	14	77.21
Total.....				—

Ex. car No. 45698. Initials, C. M. & St. P.

Received payment 12, 17, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 258—FREIGHT BILL No. 387.

Port Arthur Route. K. C. Station, 12, 16, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 16, 1901; W. B. No. Tex. 227; car No. 4514; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Hargis Gr. Co.	Skd. corn	40350	14	56.49
Total.....				<hr/>

Ex. car No. 34146. Initials, C. O. M.

Received payment 12, 17, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 259—FREIGHT BILL No. 274.

Port Arthur Route. K. C. Station, 12, 16, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 14, 1901; W. B. No. Tx. 203; car No. 13903; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	58240	14	81.53
Total.....				81.53

Ex. car No. —. Initials, —.

Received payment 12, 16, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 260—FREIGHT BILL No. 444.

Port Arthur Route. K. C. Station, 12, 28, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 28, 1901; W. B. No. Tx. 431; car No. 318; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	48000	14	67.20
Total.....				67.20

Ex. car No. 1191. Initials, O. St. L.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 261—FREIGHT BILL No. 442.

Port Arthur Route. K. C. Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 28, 1901; W. B. No. Tex. 413; car No. 20105; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	48000	14	67.20
	Total.....			67.20

Ex. car No. 6493. Initials, W. A. B.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 262—FREIGHT BILL No. 452.

Port Arthur Route. K. C. Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 26, 1901; W. B. No. Tex. 394; car No. 389; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Skd. corn	44000	14	61.60
	Total.....			———

Ex. car No. 50024. Initials, W. A. B.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight hours (48) after placing.

E. PHENNEGE, *Agent*.

EX. 263—FREIGHT BILL No. 436.

Port Arthur Route. K. C. Station, 12, 30, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

Date, —; W. B. No. —; car No. —; initials, —.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	6½	Pd.
	Total.....		14	92.40

Ex. car No. 68056. Initials, Wabash.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 264—FREIGHT BILL No. 397.

Port Arthur Route. K. C. Station, on Dec. 30th, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 26, 1901; W. B. No. Tex. 393; car No. 9766; initials, B. C. R. & D.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Skd. corn	44900	14	62.86
O. K.	Total.....	17 Pd.		

Ex. car No. 4421. Initials, St. L. & S. F.

Received payment 12, 31, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

317 EX. 265—FREIGHT BILL No. 558.

Port Arthur Route. K. C. Station.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 23, 1901; W. B. No. Tx. 351; car No. 3940; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 67543. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 266—FREIGHT BILL No. 566.

K. C. Station, — —, 190—.

To The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 23, 1901; W. B. No. Tx. 352; car No. 3997; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 68058. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 267—FREIGHT BILL No. 511.

Port Arthur Route. K. C. Station, 12, 24, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 23, 1901; W. B. No. Tx. 350; car No. 14096; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	56000	14	78.40
Total.....				78.40

Ex. car No. 67177. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 268—FREIGHT BILL No. 537.

Port Arthur Route. K. C. Station, 12, 21, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 21, 1901; W. B. No. Tex. 329; car No. 11806; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	66000	14	92.40
Total.....				6½ 92.40

Ex. car No. 64149. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

318 EX. 269—FREIGHT BILL No. 570.

Port Arthur Route. K. C. Station, 12, 21, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 21, 1901; W. B. No. Tex. 327; car No. 20142; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	66000	14	92.40
Total.....				6½ 92.40

Ex. car No. 60598. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 270—FREIGHT BILL No. 536.

K. C. Station, 12, 21, 1901.

— — — to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 21, 1901; W. B. No. Tex. 328; car No. 12657; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	66000	14	92.40
	Total.....		6½	92.40
Ex car No. 68034. Initials, —.				

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 271—FREIGHT BILL No. 435.

Port Arthur Route. K. C. Station, 12, 21, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 21, 1901; W. B. No. Tex. 330; car No. 20100; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	66000	14	92.40
	Total.....		6½	92.40
Ex. car No. 62085. Initials, —.				

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 272—FREIGHT BILL No. 441.

Port Arthur Route. K. C. Station, 12, 28, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 27, 1901; W. B. No. Tx. 405; car No. 2146; initials, O. K.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Oats	44800	14	62.72
	Total.....			62.72
Ex. car No. —. Initials, —.				

Received payment 12, 28, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 273—FREIGHT BILL No. 551.

Port Arthur Route. K. C. Station, 12, 27, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 27, 1901; W. B. No. Tex. 287; car No. 16068; initials, M. P.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	55100	14	77.14
Total.....				—

Ex. car No. —. Initials, —.

Received payment 12, 28, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 274—FREIGHT BILL No. 488.

K. C. Station, 12, 27, 1901.

— — — to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 27, 1901; W. B. No. Tex. 388; car No. 5844; initials, M. P.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
So. Grain Co.	Corn	48100	14	67.34
Total.....				67.34

Ex. car No. —. Initials, —.

Received payment 12, 28, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 275—FREIGHT BILL No. 533.

Port Arthur Route. K. C. Station, 12, 24, 190—.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 22, 1901; W. B. No. Tex. 380; car No. 25804; initials, M. P.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Oats	56400	14	78.96
Total.....				78.96

Ex. car No. —. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 276—FREIGHT BILL No. 422.

Port Arthur Route. K. C. Station, 12, 24, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 24, 1901; W. B. No. Tex. 366; car No. 20182; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	60000	14	84.00
Total.....				84.00

Ex. car No. 66063. Initials, W.

Received payment 12, 25, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

320 EX. 277—FREIGHT BILL No. 451.

Port Arthur Route. K. C. Station, 12, 24, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 24, 1901; W. B. No. Tex. 365; car No. 20154; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	44000	14	61.60
Total.....				61.60

Ex. car No. 50535. Initials, W.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 278—FREIGHT BILL No. 416.

K. C. Station, 12, 24, 1901.

— — — to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 24, 1901; W. B. No. Tex. 364; car No. 83689; initials, So. Pac.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	76250	14	106.75
Total.....				106.75

Ex. car No. 11410. Initials, C. St. P. K. C.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 279—FREIGHT BILL No. 520.

Port Arthur Route. K. C. Station, 12, 24, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 23, 1901; W. B. No. Tx. 349; car No. 16504; initials, A. F.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
B. F. Hargis.	Corn	51300	14	71.82
	Total.....			71.82

Ex. car No. —. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 280—FREIGHT BILL No. 467.

Port Arthur Route. K. C. Station, 12, 24, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 23, 1901; W. B. No. Tex. 342; car No. 1402; initials, O. S. L.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
B. F. Hargis.	Corn	68325	14	95.66
	Total.....			95.66

Ex. car No. —. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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Ex. 281—FREIGHT BILL No. 459.

Port Arthur Route. K. C. Station, 12, 21, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 21, 1901; W. B. No. Tex. 333; car No. 14151; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
B. F. Hargis Grain Co.	Corn	66000	6½	92.40
	Total.....		14	92.40

Ex. car No. 63425. Initials, W. A. B.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 282—FREIGHT BILL No. 433.

K. C. Station, 12, 21, 1901.

— to The Kansas City Southern Railway Company, Dr
 For transportation of freight from K. C. to Texarkana Station.
 Date, 12, 21, 1901; W. B. No. Tex. 332; car No. 12442; initials,
 K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14 6½	92.40
Total.....				92.40

Ex. car No. 63407. Initials, W.

Received payment 12, 26, 1901, subject to an additional charge
 for storage or demurrage, if property is not removed in forty-eight
 (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 283—FREIGHT BILL No. 424.

Port Arthur Route. K. C. Station, 12, 21, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.
 For transportation of freight from K. C. to Texarkana Station.
 Date, 12, 21, 1901; W. B. No. Tex. 320; car No. 13872; initials,
 K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
So. Grain Co.	Corn	65200	14 17	91.28
Total.....				91.28

Ex. car No. —. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge
 for storage or demurrage, if property is not removed in forty-eight
 (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 284—FREIGHT BILL No. 450.

Port Arthur Route. K. C. Station, 12, 19, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.
 For transportation of freight from K. C. to Texarkana Station.
 Date, 12, 19, 1901; W. B. No. Tex. 298; car No. 20026; initials,
 K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & Ele. Co.	Oats	50000	14	79.00
Total.....				79.00

Ex. Car No. 64351. Initials, W. A. B.

Received payment 12, 26, 1901, subject to an additional charge
 for storage or demurrage, if property is not removed in forty-eight
 (48) hours after placing.

E. PHENNEGE, *Agent*.

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Ex. 285—FREIGHT BILL No. 460.

Port Arthur Route. K. C. Station, 12, 19, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.
 For transportation of freight from Kansas City, Mo., to Texarkana Station.

Date, 12, 19, 1901; W. B. No. Tex. 296; car No. 14266; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 135508. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing. E. PHENNEGE, *Agent*.

Ex. 286—FREIGHT BILL No. 462.

Port Arthur Route. Kansas City, Mo., Station, 12, 19, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.
 For transportation of freight from Kansas City, Mo., to Texarkana Station.

Date, 12, 19, 1901; W. B. No. 295; car No. 14236; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
	Total.....			92.40

Ex. car No. 1013. Initials, O. S.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing. E. PHENNEGE, *Agent*.

Ex. 287—FREIGHT BILL No. 461.

Port Arthur Route. Kansas City, Mo., Station, 12, 18, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.
 For transportation of freight from Kansas City, Mo., to Texarkana Station.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Nicholson & Co.	Corn	66000	14	92.40
	Total.....			92.40

Date, 12, 18, 1901; W. B. No. Tx. 285; car No. 46270; initials, B. & O.

Ex. car No. —. Initials, —.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing. E. PHENNEGE, *Agent*.

EX. 288—FREIGHT BILL No. 393.

Port Arthur Route. K. C. Station, 12, 19, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 12, 17, 1901; W. B. No. Tex. 275; car No. 12827; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Skd. Oats	39300	14	55.02
Total.....				—

Ex. car No. 17430. Initials, W. A. B.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 289—FREIGHT BILL No. 407.

Port Arthur Route. K. C. Station, 12, 18, 1901.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana Station.

Date, 12, 18, 1901; W. B. No. Tex. 273; car No. 3623; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	61200	14	85.68
Total.....				85.68

Ex. car No. 1286. Initials, O. St. L.

Received payment 12, 26, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 290—FREIGHT BILL No. —.

Port Arthur Route. Kansas City, Mo., Station, 3, 8, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana Station.

Date, 3, 7, 1902; W. B. No. Tx. 75; car No. 4135; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Oats	45060	14	63.08
Total.....				63.08

Ex. car No. —. Initials, —.

Received payment 3, 8, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 291—FREIGHT BILL No. 776.

Port Arthur Route. Kansas City, Mo., Station, 2, 21, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana Station.

Date, 2, 20, 1902; W. B. No. Tx. 255; car No. 370; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
M. Gr. & E. Co.	Oats	42800	14	59.92
	Total.....			59.92

Ex. car No. 1421. Initials, K. C.

Received payment 2, 21, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 292—FREIGHT BILL No. 650.

Port Arthur Route. K. C. Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 1, 11, 1902; W. B. No. Tx. 246; car No. 4045; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	66000	14	92.40
	Total.....			—

Ex. car No. 1035. Initials, O. K.

Received payment 1, 14, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

324 EX. 293—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 3, 3, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana Station.

Date, 3, 1, 1902; W. B. No. Tx. 7; car No. 4753; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	57000	14½	82.65
	Total.....			82.65

Ex. car No. —. Initials, —.

Received payment 1, 3, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 294—FREIGHT BILL No. —.

Port Arthur Route. Kansas City, Mo., Station, 3, 3, 1902.
Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana Station.

Date, 3, 1, 1902; W. B. No. Tx. 6; car No. 402; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	56000	14½	81.20
Total.....				81.20

Ex. car No. —. Initials, —.

Received payment 3, 3, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 295—FREIGHT BILL No. —.

Port Arthur Route. Kansas City, Mo., Station, 3, 1, 1902.
Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana Station.

Date, 3, 1, 1902; W. B. No. Tex. 5; car No. 4298; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	57000	14	79.80
Total.....				79.80

Ex. car No. —. Initials, —.

Received payment 3, 3, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 296—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 3, 1, 1902.
Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 28, 1902; W. B. No. Tx. 380; car No. 4061; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
E. D. Fisher	Corn	44000	14½	63.80
Total.....				63.80

Ex. car No. —. Initials, —.

Received payment 3, 1, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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Ex. 297—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 3, 1, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.
For transportation of freight from Kansas City, Mo., to Texarkana Station.

Date, 2, 28, 1902; W. B. No. Tx. 381; car No. 11654; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
E. D. Fisher	Corn	44000	14½	63.80
Total.....				63.80

Ex. car No. —. Initials, —.

Received payment 3, 1, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 298—FREIGHT BILL No. P.

Port Arthur Route. Kansas City, Mo., Station, 3, 1, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.
For transportation of freight from Kansas City, Mo., to Texarkana Station.

Date, 2, 28, 1902; W. B. No. Tx. 382; car No. 12057; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
E. D. Fisher	Corn	44000	14½	63.80
Total.....				63.80

Ex. car No. —. Initials, —.

Received payment 3, 1, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

Ex. 299—FREIGHT BILL No. —.

Port Arthur Route. Kansas City, Mo., Station, *K. C. Station*,
3, 1, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.
For transportation of freight from Kansas City, Mo., to Texarkana Station.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Haroun Com. Co	Corn	44000	14½	63.80
Total.....				63.80

Ex. car No. —. Initials, —.

Received payment 3, 1, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 300—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 3, 1, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from K. C. to Texarkana Station.

Date, 2, 28, 1902; W. B. No. Tx. 384; car No. 4178; initials, P. G.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Haroun Com. Co.	Corn	44000	14½	63.80
Total.....				63.80

Ex. car No. —. Initials, —.

Received payment 3, 1, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

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EX. 301—FREIGHT BILL No. 545.

Port Arthur Route. K. C. Station, 1, 7, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana Station.

Date, 1, 6, 1902; W. B. No. Tx. 75; car No. 51856; initials, C. M.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	61100	14	85.54
Total.....				85.54

Ex. car No. —. Initials, —.

Received payment 1, 7, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EX. 302—FREIGHT BILL No. 657.

Port Arthur Route. Kansas City, Mo., Station, 2, 18, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.

For transportation of freight from Kansas City, Mo., to Texarkana Station.

Date, 1, 17, 1902; W. B. No. Tx. 497; car No. 410; initials, P. G.

No. and description

Marks.	of articles.	Weight.	Rate.	Amount.
Moore Gr. & E. Co.	Corn	66000	14	92.40
Add'l Bill a/c error in rate was billed 66000, should be 66000.				14½
				95.70
Balance due..				3.30

Ex. car. No. 1189. Initials, O. S. L.

Received payment 2, 19, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

E. PHENNEGE, *Agent*.

EXHIBIT 203—FREIGHT BILL No. —.

Port Arthur Route. Kansas City, Mo., Station, 2, 18, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.
For transportation of freight from Kansas City, Mo., to Texarkana Station.

Date, 1, 30, 1902; W. B. No. Tex. 573; car No. 3329; initials, P. G.

Marks.	No. and description of article.	Weight.	Rate.	Amount.
Moore Gr. & El. Co.	was billed	56000	14	92.40
	should be	66000	14½	95.70

Ex. car No. 67977. Initials, W.

Received payment 2, 19, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

Ex. 304—FREIGHT BILL No. —.

Port Arthur Route. K. C. Station, 1, 26, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.
For transportation of freight from K. C. to Texarkana Station.

Date, 1, 26, 1902; W. B. No. Tx. 475; car No. 12132; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Corn	60000	14½	87.00
	as billed	60000	14	84.00

Bal. due..... 3.00

Ex. car No. —. Initials, —.

Received payment 2, 3, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

327 Ex. 305—FREIGHT BILL No. P.

Port Arthur Route. Station, 1, 10, 1902.

Forrester Bros. to The Kansas City Southern Railway Company, Dr.
For transportation of freight from K. C. to Texarkana Station.

Date, 1, 10, 1902; W. B. No. Tex. 195; car No. 13944; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Harroun Com. Co.	Oats	44000	14	61.60
	Total.....			61.60

Received payment 1, 11, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. E. PHENNEGE, *Agent*.

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Ex. A1—FREIGHT BILL No. 857.

Port Arthur Route. Texa. Station, 12, 19, 1901.

Sto. Nfy. Nicholson & Co. to Texarkana & Ft. Smith Railway Company, Dr.

For transportation of freight from Kansas City Station on the —
R. R.Date, 12, 12, 1901; W. B. No. Tex. 178; car No. 3493; initials,
P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
8793.	Sx. Corn, O. K.		16 Pd.	
Consignor,	C. L. Wts.	60800	14	Paid
Forrester Bros.	Chix. 363 Tx.			

Ex. car No. 12731. Initials, S. F.

Received payment 12, 20, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. L. W. McBRIDE, Agent. B.

Ex. A2—FREIGHT BILL No. 833.

Port Arthur Route. Texa. Station, 1, 20, 1902.

Forrester Bros.—Fowler Co. 878—to Texarkana & Ft. Smith Rail-
way Company, Dr.For transportation of freight from Kansas City Station on the —
R. R.

Date, 1, 14, 1902; W. B. No. Tx. 287; car No. 22166; initials, A. V.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
23166 ar.				
Nochg. K. city.				
Consignor,				
Omaha	Blk. corn	33000	14	46.20
	Advances			63.53
	Total			109.73

Point of origin, Anthony, Ia.

Ex. car No. 6618. Initials, I. M. 9769.

Received payment 2, 17, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. L. W. McBRIDE, Agent.

EX. A3—FREIGHT BILL No. 989.

Port Arthur Route. Texa. Station, 12, 23, 1901.

Forrester Bros.

For transportation of freight from Kansas City Station on the —
R. R.

Date, 12, 17, 1901; W. B. No. Tex. 244; car No. 53587; initials,
C. & I. P.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Consignor,	Bulk Oats	45400	20	
Douglas Elev. Co.			14	63.56
Point of Origin, Cheyene, Ia.				
	Advances.....			90.80
	Total.....			154.36

Received payment 2, 3, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. L. W. McBRIDE, Agent.

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EX. A5—FREIGHT BILL No. 272.

Port Arthur Route. Texa. Station, 12, 6, 1901.

Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.
Date, 11, 29, 1901; W. B. No. 478; car No. 4565; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
	Blk. corn.	65100	17	
Consignor,			14	91.14
Wab. 5265.	11, 27, 23..... 283			
Cal. Jet. M. B. O. 57.	11, 27... 934 O. K.			
	651 C. Lots.			
	Advances.....			110.67
	Total.....			201.81

Forrester.

Ex. car No. 1041. O. K. C. & E.

Received payment 2, 4, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. L. W. McBRIDE, Agent.

EX. A4—FREIGHT BILL No. 1083.

Port Arthur Route. Texa. Station, 12, 24, 1901.

Forrester Bros. to Texarkana & Fort Smith Rly. Co., Dr.

For transportation of freight from Kan. City Station on the — R. R.

Date, 12, 17, 1901; W. B. No. Tex. 243; car No. 50733; initials, C. R. I. P.

Marked.	No. and description of articles.	Weight.	Rate.	Amount.
Consignor,	Bulk Oats	48000	20	67.20
Douglas El Co.	O. K.		14	
Point of Origin, Lake Park, Ia.				
	Advances.....			96.00
	Total.....			163.20

Received payment, Jan'y 28, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

L. W. McBRIDE, *Agent*.

EX. A6—FREIGHT BILL No. 186.

Port Arthur Route. Texa. Station, 12, 5, 1901.

Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.

Date, 11, 29, 190-; W. B. No. 471; car No. 142311; initials, K. C. K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Consignor,	Blk. corn	57500	17	
W. A. B. 5236.	11, 25.		14	
Cal. Jet. W. B. C. S. 3	11, 20..	877		
W. A. Smith.....		302		
		575		80.50
	Advances.....			97.75
	Total.....			178.25

Ex. car No. 63741. W.

Received payment, 2, 1, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

L. W. McBRIDE, *Agent*.

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EX. A7—FREIGHT BILL No. 102.

Port Arthur Route. Texa. Station, 12, 3, 1901.

Order, Omaha El. Co. Mfg.

Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.
Date, 11, 29, 190-; W. B. No. 470; car No. 4251; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
			65	
Consignor,	Oats	59500	14	83.30
Wab. 1789.	11, 29.....	895		
Co. Bluffs W. B. 147.	11, 14..	300		
O. M. E. Co.....		595	Cks. 315 Sx.	
	Advances.....			34.50
	Total.....			117.80

Ex. car No. 66148. W.

Received payment 12, 19, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. L. W. McBRIDE, Agent.

EX. A8—FREIGHT BILL No. 100.

Port Arthur Route. Texa. Station, 12, 3, 1901.

Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

Date, 11, 29, 190-; W. B. No. 464; car No. 2047; initials, O. K.
C. & E.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Consignor,	Blk. Corn	61050	17	
Wab. 5276.	11, 28.....	906		
Cal. Jet. W. B. 055	11, 25.	29550	14	85.47
W. A. Smith.....		61050		
	Advances.....			103.79

Forrester.

Total..... 189.26

Received payment 2, 5, 1902, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. L. W. McBRIDE, Agent.

EX. A9—FREIGHT BILL No. 270.

Port Arthur Route. Texa. Station, 12, 6, 1901.

Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.

Date, 11, 29, 190-; W. B. No. 463; car No. 4393; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount
			17	
Consignor,	Blk. Corn	56400	14	78.96
Wab. 5277.	11, 28.....	861		
Cal. Jet. W. B. O. S. 4.	11, 23..	297		
W. A. Smith.....		564		
	Advances.....			95.88
Forrester.	Total.....			174.84

Ex. car No. 2084. Initials, O. K. C. & E.

Received payment 2, 3, 1902, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing

L. W. McBRIDE, Agent.

331 EX. A10—FREIGHT BILL No. 300.

Port Arthur Route. Texa. Station, 12, 2, 1901.

Order, Omaha Ele. Co. Mfg.

Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.

Date, 11, 27, 190-; W. B. No. 453; car No. 14177; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Consignor,	Oats	50000	14	
Wab. 1785.	11, 29. O. R. C.	Lwts.	Texa	70.00
Co. Bluffs W. B. 157.	11, 14.			
Om. El. Co.	Cks. 313 Sx.			
	Advances Wab.....			34.50
	Total.....			104.50

Ex. car No. 65306. W.

Received payment 12, 19, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

L. W. McBRIDE, Agent.

Ex. A11—FREIGHT BILL No. 50.

Port Arthur Route. Texa. Station, 12, 2, 1901.

Sto. Mfg. Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.
 Date, 11, 27, 190-; W. B. No. 434; car No. 16552; initials, A. T.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
			17	
Consignor,	Blk. Corn	52600	14	
Wab. 5161.	11, 19. Or. Sl. & C.	C. Lwts		73.64
Rutland Mo.	W. B. 266.	11, 23.		
C. L. Thompson.				
	Advances.....			89.42
	Total.....			163.06

Received payment 12, 7, 1901, subject to an additional charge
 for storage or demurrage, if property is not removed in forty-eight
 (48) hours after placing. L. W. McBRIDE, Agent.

Ex. A12—FREIGHT BILL No. 12.

Port Arthur Route. Texa. Station, 12, 2, 1901.

Order, Omaha Ele. Co. Mfg.

Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.
 Date, 11, 27, 190-; W. B. No. 454; car No. 4095; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
			65	
Consignor,	Corn	60000	14	
Wab. 1783.	11, 29. O. R.	C. Lwts.		84.00
Co. Bluffs W.	B. 136.	11, 14.		
Om. El. Co.	Cks. 359 Sax.			
	Advances.....			41.00
	Total.....			125.00

Ex. car No. 68272. W.

Received payment 12, 3, 190-, subject to an additional charge
 for storage or demurrage, if property is not removed in forty-eight
 (48) hours after placing. L. W. McBRIDE, Agent.

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EX. A13—FREIGHT BILL No. 49.

Port Arthur Route. Texa. Station, 12, 2, 1901.

Order Omaha El. Co. Mfg. Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.

Date, 11, 27, 190—; W. B. No. 433; car No. 14152; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
			65	
Consignor,	Corn	60000	14	84.00
Wab. 1782, 11, 19.	O. R. Elexts.			
Co. Bluffs, W. B.	135. 11, 14.			
O. EL. Co.	Cks. 454. Sx. Advances.			41.00
Total.....				125.00

Ex. car No. 66353. W.

Received payment 12, 17, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

L. W. McBRIDE, Agent.

EX. A14—FREIGHT BILL No. 290.

Port Arthur Route. Texa. Station, 12, 2, 1901.

Order Omaha Ele. Co. Mfg. Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.

Date, 11, 27, 190—; W. B. No. 452; car No. 3441; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
			65	
Consignor,	Oats	52000	14	
Wab. 1543, 11, 19.	O. R. C. Lwts.			72.80
Co. Bluffs, W. B.	147. 11, 14. Cks. 329 Sax.			
Om. El. Co.	Advances.....			35.80
Total.....				108.60

Ex. car No. 64258. W.

Received payment 12, 3, 190—, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

L. W. McBRIDE, Agent.

Ex. A15—FREIGHT BILL No. 1495.

295.

Order Omaha El. Co. Mfg. Forrester Bros. to Texarkana & Fort
Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.
Date, 11, 25, 190—; W. B. No. 409; car No. 3120; initials, P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
			65	
Consignor,	Oats	52000	14	72.80
Wab. 1535.	11, 19. O. R. S. Lc. C. Lwts.			
Co. Bluffs,	W. B. 152, 11, 14, Cks. 326 Sax.			
O. M. E. Co.	Advances.....			35.80
	Total.....			108.60
Ex. car No. 1222.	O. S. L.			

Received payment 12, 7, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. L. W. McBRIDE, *Agent*.

333 Ex. A16—FREIGHT BILL No. 1352.

288.

Port Arthur Route. Texa. Station, 11, 27, 1901.

Order Omaha Ele. Co. Mfg. Forrester Bros. to Texarkana & Fort
Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.
Date, 11, 25, 190—; W. B. No. 402; car No. 12387; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
			65	
Consignor,	Oats	52000	14	72.80
Wab. 1545.	11, 29. O. R. C. Lwts.			
Co. Bluff,	W. B. 145, 11, 14,			
OM. Ele. Co.	Hunter W. House.			
	Advances.....			35.80
	Total.....			108.60
Ex. car No. 1057.	O. S. L.			

Received payment 12, 7, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. L. W. McBRIDE, *Agent*.

EX. A17—FREIGHT BILL No. 613.

228.

Port Arthur Route. Texa. Station, 11, 13, 1901.

Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.
 For transportation of freight from K. C. Station on the — R. R.
 Date, 11, 7, 190—; W. B. No. Tex. 109; car No. 4985; initials,
 P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
			17	
Consignor,	Blk. corn	60900	10	60.90
Wab. 5030, 11, 7	915	OR.		
Cal. Jet. W. B. C. S.	306			
1, 11, 1.	609			
W. A. Smith.	Advances.....			103.53
Total.....				164.43

Received payment 11, 27, 1901, subject to an additional charge
 for storage or demurrage, if property is not removed in forty-eight
 (48) hours after placing.

L. W. McBRIDE, *Agent*.

EX. A18—FREIGHT BILL No. 710.

227.

Port Arthur Route. Texa. Station, 11, 15, 1901.

Forrester Bros. to Texarkana & Frt. Smith Railway Company, Dr.
 For transportation of freight from K. C. Station on the — R. R.
 Date, 11, 7, 190—; W. B. No. Tex. 108; car No. 2197; initials,
 O. K. C. & E.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
			17	
Consignor,	Blk. corn	61300	10	61.30
Wab. 5025. 11, 27.	911	O. R.		
Cal. Jet. W. B. O. S.	398			
W. A. Smith.	613	Wab.		
	Advances.....			104.21
Total.....				165.51

Received payment 11, 29, 190—, subject to an additional charge
 for storage or demurrage, if property is not removed in forty-eight
 (48) hours after placing.

L. W. McBRIDE, *Agent*.

334

EX. A19—FREIGHT BILL NO. 706.

61.

Port Arthur Route. Texa. Station, 11, 15, 1901.

Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.

Date, 11, 7, 190—; W. B. No. Tex. 95; car No. 14240; initials, K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
			17	
Consignor,	Blk. corn	50100	10	50.10
Wab. 5261.	11, 6 828			
Cal. Jet. 3a.	W. B. 17. 1, 11 321	O. R.		
W. A. Smith	507	Wab.		
	Advances.....			121.04
				171.14

Received payment 11, 27, 190—, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

L. W. McBRIDE, *Agent*.

EX. A20—FREIGHT BILL NO. 705. 210.

Port Arthur Route. Texa. Station, 11, 15, 1901.

Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.

Date, 11, 6, 190—; W. B. No. Tex. 81; car No. 4627; initials P. G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
			17 Pd.	
Consignor,	Blk. corn	57300	10	57.30
Wab. 5263.	11, 6. 864	O. R.		
Cal. Jet. 3a.	W. B. 9, 10, 29 291			
W. A. Smith.	573	Wab.		
	Advances.....			97.41

Total..... 154.71

Received payment 11, 29, 190—, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

L. W. McBRIDE, *Agent*.

EX. A21—FREIGHT BILL No. 1085. 478.

Port Arthur Route. Texa. Station, 12, 24, 1901.

S./O. Mfg. Nicholson & Co. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.
 Date, 12, 21, 1901; W. B. No. Tex. 321; car No. 9823; initials,
 B. C. L. & N.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
	9071		6½ Pd.	
Consignor,	Sx. corn	58000	14	81.20
Forrester Bros.	O. K. S. L.			
Point of origin,	C. L. Wts.			
Co. Bluffs, Ia.				
	Advances.....			
	Total.....			81.20

Received payment 12, 26, 1901, subject to an additional charge
 for storage or demurrage, if property is not removed in forty-eight
 (48) hours after placing.

L. W. McBRIDE, *Agent*.

335 EX. A22—FREIGHT BILL No. 1127. 463.

Port Arthur Route. Texa. Station, 12, 26, 1901.

S. O. Nty. Nicholson & Co. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.
 Date, 12, 19, 1901; W. B. No. Tex. 297; car No. 20211; initials,
 K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Wab. 12, 3.	Sk. corn	66000	6½ Pd.	92.40
Consignor,				
Forrester Bros.	# Checks 8999.			
	3 92			
Point of Origin,				
Co. Bluff-, Ia.				
T. I. B. 1156.	12. 10. Hunter Ware House.			
	Advances.....			
	Total.....			92.40

Ex. car No. 63682. Initials. Wab.

Received payment 12, 26, 1901, subject to an additional charge
 for storage or demurrage, if property is not removed in forty-eight
 (48) hours after placing.

L. W. McBRIDE, *Agent*.

Ex. A23—FREIGHT BILL No. 1124. 406.

Port Arthur Route. Texa. Station, 12, 190—.

S./O. Mfg. Nicholson to Texarkana & Fort Smith Railway Company,
Dr.

For transportation of freight from K. C. Station on the — R. R.

Date, 12, 29, 1901; W. B. No. Tex. 294; car No. 3427; initials,
P. & G.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
Wab. 11, 29.	Sx. corn	54650	17 Pd.	
Consignor,	8890		14	80.71
Forrester Bros.	# Cks. 350 Hcs.			
Point of origin,				
Mandemea, Ia.				
T. I. R. 988.	12, 29.			
	Total.....			80.71
Initials, 63226,	Wab.			

Received payment 12, 26, 1901, subject to an additional charge
for storage or demurrage if property is not removed in forty-eight
(48) hours after placing. L. W. McBRIDE, *Agent*.

Ex. A24—FREIGHT BILL No. 992. 434.

Port Arthur Route. Texa. Station, 12, 23, 1901.

S./O. Mfg. Nicholson A. Co. to Texarkana & Fort Smith Railway
Company, Dr.

For transportation of freight from Kan. City Station on the —
R. R.

Date, 12, 18, 1901; W. B. No. Tx. 271; car No. 13619; initials,
K. C. S.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
8980	Sx. corn		6½ Pd.	
Consignor,		66000	14	92.40
Forrester Bros.	O. K. S. L. C. L. Wts.			
Point of origin,	Check 398 Sx.			
Co. Bluff, Ia.	Hunter ware house.			
	Total.....			92.40

Ex. car No. 67994. Initials, Wab.

Received payment 12, 25, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing. L. W. McBRIDE, *Agent*.

336 EX. A25—FREIGHT BILL No. 1006. 399.

Port Arthur Route. Texa. Station, 12, 23, 1901.

S./O. Mfg. Nicholson & Co. to Texarkana & Fort Smith Railway
Company, Dr.For transportation of freight from Kan. City Station on the —
R. R.Date, 12, 18, 1901; W. B. No. Tex. 272; car No. 10304; initials,
S. & L.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
	8894		17 Pd.	
Consignor,	# Sx. corn	44100	14	61.74
Forrester Bros.	# Check 165.	C. L. Wts.		
Point of Origin,				
Mo. Valley, Ia.	C. B.			
	Total.....			61.74

Ex. car No. 4251. Initials, S. L. S. F.

Received payment 12, 23, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing L. W. McBRIDE, *Agent*.

EX. A26—FREIGHT BILL No. 642.

Port Arthur Route. Texa. Station, 11, 14, 1901.

Order Omaha El. Co. Mfg. Forrester Bros. to Texarkana & Fort
Smith Railway Company, Dr.For transportation of freight from K. C. Station on the — R. R.
Date, 11, 8, 190—; W. B. No. Tex. 137; car No. 1194; initials,
K. & W.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
	Corn	44000	Pd. 10	44.00
Consignor,	O. R. C. Lwts.		Paid	35.20
K. C. N. C. 1444.	11, 1.			
Co. Bluffs, W. B. 322	10, 17.			
O. E. Co.				

Total..... 8.80

Ex. car No. 8197. Initials, P. C. C. S. L.

Received payment 11, 14, 1901, subject to an additional charge
for storage or demurrage, if property is not removed in forty-eight
(48) hours after placing L. W. McBRIDE, *Agent*.

EX. A27—FREIGHT BILL No. 464.

Port Arthur Route. Texa. Station, 11, 9, 1901.

Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from Kan. City Station on the — R. R.

Date, 11, 2, 1901; W. B. No. Tex. 25; car No. 11095; initials, K. C. S.

Marks.	No. and description of articles.	Weights.	Rates Pd.	Amount.
	Corn	48400	10	48.40
Consignor,	O. R. S. Lc.	Paid		38.72
K. C. N. C.	1447. 11, 1.			
California, Ict. W. B.	740			
28-10/25. Wab.	256			
	484 P. G.			

Total..... 9.68

Received payment 11, 14, 1901, subject to an additional charge for storage or demurrage if property is not removed in forty-eight (48) hours after placing. L. W. McBRIDE, Agent.

337

EX. A28—FREIGHT BILL No. 1182.

Port Arthur Route. Texa. Station, 11, 23, 1901.

S./O. Mfg. Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.

Date, 11, 13, 190—; W. B. No. 242; car No. 21901; initials, Q.

Marks.	No. and description of articles.	Weight.	Rate.	Amount.
	Corn	44100	10	44.10
Consignor,	O. R.	Paid		35.28
K. C. N. C.	1596 686			
	245			
H. C. & Son.	441 In transit 11, 10.			
Point of origin,				
Kingsley, Ia.				
	Total.....			8.82

Received payment 11, 21, 190—, subject to an additional charge for storage or demurrage if property is not removed in forty-eight (48) hours after placing. L. W. McBRIDE, Agent.

EX. A29—FREIGHT BILL No. 1161.

Port Arthur Route. Texa. Station, 11, 18, 190—.

S/O. Mfg. Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.

Date, 11, 18, 190—; W. B. No. Tex. 312; car No. 3021; initials, P. G.

Marks.	No. and description of articles.			Weight.	Rate.	Amount.
Consignor,	Corn			43200	10	43.20
K. C. N. C.	1565.	11, 3.	Cks.	258	Sx. O. R.	
Graven, W. B.	O. S. 4.	10, 22		660	Paid	34.56
				<hr/>		
P. & C.				228		
				<hr/>		
				432		

Total..... 8.64

In transit prior to 11, 9.

Ex. car No. 1966. B. & M.

Received payment 11, 25, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

L. W. McBRIDE, Agent.

EX. A30—FREIGHT BILL No. 1230.

Port Arthur Route. Texa. Station, 11, 25, 1901.

S/O. Mfg. Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from Kansas City Station on the — R. R.

Date, 11, 13, 1901; W. B. No. Tex. 241; car No. 4524; initials, — P. G.

Marks.	No. and description of articles.		Weight.	Rate.	Amount.
Consignor,	Corn		48800	10	48.80
K. C. N. C.	1605.	11, 4. # 288 sx.		Pair	39.04
Point of Origin,	In transit prior to Nov. 10.				
Platte Center,	788				
	300				
	<hr/> 488				

Total..... 9.76

Ex. car No. 36456. Initials, U. P.

Received payment 11, 25, 190—, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

L. W. McBRIDE, Agent.

338 Ex. A31—FREIGHT BILL No. 1265. 217.

Port Arthur Route. Texa. Station, 11, 25, 190—.

S./O. Mfg. Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.

Date, 11, 14, 190—; W. B. No. Tex. 265; car No. 4828; initials, P. G.

Marks.	No. and description of articles.		Weight.	Rate. Pd.	Amount.
	Sx. corn		44000	10	44.00
Consignor,	O. R. C. L. Wts.				
K. C. N. C.	1554.	11,4 Cks. 244 Sx.		Paid	35.20
Co. Bluffs.					
I. M. G. Co.	In transit 11, 9.				
Total					8.80

Ex. car No. 17407. Initials, A. T.

Received payment 11, 27, 190—, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

L. W. McBRIDE, *Agent*.

Ex. A32—FREIGHT BILL No. 836.

C. Belt.

Port Arthur Route. Texa. Station, 11, 18, 190—.

S./O. Mfg. Forrester Bros. to Texarkana & Fort Smith Railway Company, Dr.

For transportation of freight from K. C. Station on the — R. R.

Date, 11, 12, 190—; W. B. No. 213; car No. 14150; initials, K. C. S.

Marks.	No. and description of articles.		Weight.	Rate.	Amount.
	Corn		40000	10	40.00
Consignor,	O. R.				
K. C. N. C.	1572.	11, 4.			
O. E. Co.	(In transit prior to 11, 9.)		Paid		32.00
Point of origin	Cks. 242 Sx.				
Co. Bluffs.					

Total 8.00

Ex. car No. 50804. W. A. B.

Received payment 11, 21, 1901, subject to an additional charge for storage or demurrage, if property is not removed in forty-eight (48) hours after placing.

L. W. McBRIDE, *Agent*.

339 Thereafter, and on the 8th day of Jan'y 1907, garnishee filed its motion for a new trial, as follows, to-wit:

In the District Court for Crawford County, Kansas, Sitting at
Pittsburg.

C. H. ALBERS COMMISSION COMPANY, Plaintiff,

vs.

ROBERT L. FORRESTER and JOSEPH M. FORRESTER, Partners, as
Forrester Brothers, Defendants; The Kansas City Southern Rail-
way Company, a Corporation, Garnishee.

Motion for New Trial.

Comes now the garnishee, The Kansas City Southern Railway Company, a corporation, and moves the court to set aside and vacate the decision rendered and the judgment granted in the above entitled cause on to-wit the seventh day of January, 1907, in favor of the plaintiff and against the garnishee, and to grant a new trial of said cause for the following reasons, to-wit:

First. Irregularity in the proceedings of the court and an abuse of discretion by the court by which the garnishee was prevented from having a fair trial.

Second. Accident and surprise which ordinary prudence could not have guarded against.

Third. Error in the assessment of the amount of recovery, in that the same is too large.

Fourth. The decision is not sustained by sufficient evidence and is contrary to law.

Fifth. Newly discovered evidence, material for the garnishee which it could not with reasonable diligence have discovered and produced at the trial.

Sixth. Error of law occurring at the trial and excepted to by the garnishee.

Seventh. Because the Court erred in not holding that jurisdiction of this case is in the Federal Courts and in not dismissing the proceedings, in as much as the case involves charges on interstate shipments arising under the provisions of the Interstate Commerce Act, and a construction of the provision of that act is necessary to a proper determination of the case.

Eighth. Because the Court erred in holding that a joint tariff or joint rate if established by two connecting railway companies on interstate business is effective before it is filed with the Interstate Commerce Commission.

340 Ninth. Because the Court erred in holding that the garnishee could deviate or depart from its regular published tariffs applicable to interstate business and apply thereto other rates which it might agree upon with a shipper.

CYRUS CRANE,
W. J. WATSON,
Attorneys for Garnishee.

Endorsed: The Albers Commission Co., Plaintiff, vs. Forrester Brothers, Defendants. The Kansas City Southern Railway Company, Garnishee. Motion for a New Trial. Filed January 8th, 1907. C. E. Woodbury, District Clerk, by R. J. Dickey, Deputy. Cyrus Crane, W. J. Watson, Attorneys for Garnishee.

341 Thereafter, and on Feb'y 26th, 1907, garnishee filed its motion for an extension of time in which to serve a case-made, as follows, to-wit:

In the District Court for Crawford County, Sitting at Pittsburg,
Kansas.

THE C. H. ALBERS COMMISSION COMPANY (a Corporation), Plaintiff,
vs.

ROBERT L. FORRESTER and JOS. M. FORRESTER, Partners Doing Business under the Style and Firm Name of Forrester Brothers, Defendants; The Kansas City Southern Railway Company (a Corporation), Garnishee.

Motion.

Comes now The Kansas City Southern Railway Company, Garnishee, above named, and moves the Court to grant an extension of time for serving the case-made in the above entitled cause, for one hundred and twenty (120) days.

CYRUS CRANE,
W. J. WATSON,
Attorneys for Garnishee.

Endorsed: No. 161. The Albers Commission Co., Plaintiff, vs. Forrester Brothers, Defendants; The Kansas City Southern, Garnishee. Motion. Filed Feb'y 26th 1907. C. N. Price, District Clerk. By R. J. Dickey, Deputy. Docket B, page 93.

342 Thereafter, and upon the 26th day of February, 1907, the Court made the following order, to-wit:

In the District Court for Crawford County, Sitting at Pittsburg,
Kansas.

THE C. H. ALBERS COMMISSION COMPANY (a Corporation), Plaintiff,
vs.

ROBERT L. FORRESTER and JOS. M. FORRESTER, Partners Doing Business under the Style and Firm Name of Forrester Brothers, Defendants; The Kansas City Southern Railway Company (a Corporation), Garnishee.

Order.

For good cause shown, it is hereby ordered that the time for serving a case-made in the above entitled cause be extended one

hundred and twenty (120) days herefrom, and that 15 days be given for suggesting amendments, the case-made to be settled and signed upon five days' notice.

ARTHUR FULLER, *Judge.*

Pittsburg, Kansas, Feb'y 26" 1907.

Endorsed: No. 161. The Albers Commission Company, Plaintiff, vs. Forrester Brothers, Defendants; The Kansas City Southern, Garnishee. Order. Filed Feb'y 26" 1907. C. N. Price, District Clerk. By R. J. Dickey, Deputy.

343 Thereafter, and upon the 1st day of March, 1907, Garnishee filed the following notice, to-wit:

In the District Court for Crawford County, Sitting at Pittsburg, Kansas.

THE C. H. ALBERS COMMISSION COMPANY (a Corporation), Plaintiff,
vs.

ROBERT L. FORRESTER and JOS. M. FORRESTER, Partners Doing Business under the Style and Firm Name of Forrester Brothers, Defendants; The Kansas City Southern Railway Company (a Corporation), Garnishee.

Notice.

To the C. H. Albers Commission Company, J. M. Wayde, C. O. Pingry and B. S. Gaitskill, its attorneys of record:

You, and each of you, are hereby notified that the Hon. Arthur Fuller, he being the Judge before whom the above entitled cause was tried, did on February 26th, 1907, order that the time for serving a case-made in this said cause be extended one hundred and twenty (120) days from this date, and that 15 days be given for suggesting amendments, the case-made to be settled and signed in 5 days.

CYRUS CRANE,

W. J. WATSON,

Attorneys for Garnishee.

Service of the above notice acknowledged the 27th day of February A. D. 1907.

J. M. WAYDE,

B. S. GAITSKILL,

C. O. PINGRY,

Attorneys for Plaintiff.

Endorsed: No. 161. The Albers Commission Company, Plaintiff, vs. Forrester Brothers, Defendants; The Kansas City Southern Ry. Co., Garnishee. Notice. Filed Mar. 1st, 1907. C. N. Price, District Clerk. By R. J. Dickey, Deputy.

344 In the District Court of Crawford County, Kansas, Sitting at Pittsburg.

No. 161.

THE C. H. ALBERS COMMISSION COMPANY, a Corporation, Plaintiff,
vs.

ROBERT L. FORRESTER and JOSEPH M. FORRESTER, Partners Doing Business under the Firm Name and Style of Forrester Bros., Defendants; The Kansas City Southern Railway Company, a Corporation, Garnishee.

Journal Entry.

Be it remembered, that on the 31st day of May, A. D. 1906, the same being the — day of the May term of the District Court of the Thirty-eighty Judicial District of the State of Kansas, Sitting at Pittsburg, and within and for the County of Crawford and State of Kansas, and there being present:

Hon. Arthur Fuller, Judge.

J. E. Walsh, Sheriff.

C. E. Woodbury, Clerk of the District Court.

J. M. Wayde, County Attorney.

Robert Colborn, Reporter.

And said District Court being in regular session, the above entitled action came on for hearing upon the regular call of the trial docket upon the issues joined in said action between said plaintiff and said garnishee, The Kansas City Southern Railway Company. The said C. H. Albers Commission Company appeared by its attorneys, Paul F. Coste, John M. Wayde and B. S. Gaitskill; and the said garnishee, The Kansas City Southern Railway Company,

appeared by its attorneys, Cyrus Crane and W. J. Watson.

345 The following jurors were duly examined, empannelled and sworn to try the matters in issue between said plaintiff and said garnishee:

S. S. Clugston.

S. T. Easley.

J. A. Hush.

G. R. Hardin.

W. R. Mills.

R. P. Gorrell.

Geo. McManaway.

P. S. Needham.

B. W. Phelps.

Wm. Runner.

J. T. Stewart.

Horace Wood.

By agreement of counsel and order of court, the further hearing of this case was continued until the 5th day of June, A. D. 1906, at 9 O'clock, A. M., the same being the — day of the May, 1906, term of said court. On the 5th day of June, A. D. 1906, the above entitled action came on for hearing, and there being present:

Hon. Arthur Fuller, Judge.

J. E. Walsh, Sheriff.

C. E. Woodbury, Clerk District Court.

J. M. Wayde, County Attorney.

Robert Colborn, Reporter.

and said court being in regular session, and said plaintiff appeared by its attorneys, Paul F. Coste, John M. Wayde and B. S. Gaitskill; and said garnishee appeared by its attorneys, Cyrus Crane and W. J. Watson.

To sustain the issues in behalf of said plaintiff, said plaintiff introduced in evidence the testimony of E. H. Schaufler, Louis F. Moore, J. E. Rahm, E. T. Catlin, John A. Hanley, C. V. Fisher, C. E. Woodbury and — Forrester, together with certain court records and other documentary evidence, whereupon said plaintiff rested its case and thereupon said garnishee in support of the issues on its behalf introduced in evidence the testimony of C. V. Fisher and F. M. King, whereupon it was agreed in open court

346 between the attorneys of said plaintiff and attorneys of said garnishee, that the jurors heretofore empanelled in this case be discharged, and the trial by jury be waived and the issues joined between said plaintiff and said garnishee, be and the same is hereby submitted to Judge Arthur Fuller, Judge of said District Court, on the evidence heretofore introduced in this case on this hearing, together with such further evidence as either side might offer, and that any judgment or decision rendered by the judge of said court should have the same force and effect as if the jury had been waived in the first instance. And thereupon the said garnishee offered in evidence before said court the deposition of E. E. Smythe, and thereupon it was agreed in open court between the attorneys for said plaintiff and the attorneys for said garnishee that the further hearing of this case be continued until the 1st day of the November term of the District Court, 1906 and that said case be taken under advisement by said court, and that on the first day of the November term of said District Court 1906, or as soon thereafter as the same can be conveniently heard by said court that the matters in issue herein be argued before said court and then be decided by said court. And on the 6th day of June, A. D. 1906, it was by the court considered, ordered and adjudged that the further hearing of this case be continued until the next term of the District Court of Crawford County, Kansas, sitting at Pittsburg, the same being the November term of said court, 1906.

B. S. GAITSKILL,

JOHN M. WAYDE,

Attorneys for Plaintiff.

CYRUS CRANE,

W. J. WATSON,

Attorneys for Garnishee.

Endorsed: #161. C. H. Albers Com. Co., Plff. vs. Forrester Bros., Def't; K. C. S. Ry. Co., Garnishee. Trial case at May term 1906. Filed May 16th 1907. C. N. Price, Clerk. By R. J. Dickey, Deputy.

347 In the District Court of Crawford County, Kansas, Sitting at
Pittsburg.

No. 161.

THE C. H. ALBERS COMMISSION COMPANY, a Corporation, Plaintiff,
vs.

ROBERT L. FORRESTER and JOSEPH M. FORRESTER, Partners Doing
Business under the Firm Name and Style of Forrester Bros.,
Defendants.

Journal Entry.

Be it remembered, That on this 7th day of January, A. D. 1907, the same being the — day of the November, A. D. 1906, term of the District Court of Crawford County, Kansas, Sitting at Pittsburg, the above entitled action came on for hearing on the regular call of the trial docket in said court; said date being the first convenient day of said term of court that said case could be heard by said court.

Said plaintiff appeared by its attorneys, B. S. Gaitskill and John M. Wayde, and the said garnishee appeared by its attorneys, Cyrus Crane and W. J. Watson; and the said District Court being in regular session and there being present:

Hon. Arthur Fuller, Judge.

J. E. Walsh, Sheriff.

C. E. Woodbury, Clerk District Court.

J. M. Wayde, County Attorney.

Robert Colborn, Reporter.

Upon the evidence heretofore introduced upon the issues joined between the said plaintiff and the said garnishee and upon the proofs offered and the arguments of counsel for said plaintiff and said garnishee, said cause was submitted to said court, and said court after full consideration does find the issues in favor of said plaintiff

348 and against said garnishee, and said court further finds that at the date of the service of summons in garnishment upon said garnishee in this case, said garnishee, The Kansas City Southern Railway Company, was indebted to the said firm of Forrester Bros., the above named defendants, in the sum of ten thousand five hundred twenty-seven and 55/100 dollars (\$10,527.55) and the court further finds that said sum bears interest at the rate of six per cent. per annum from the 7th day of April, A. D. 1902 to the date of this judgment and the court further finds that the amount due from said defendants, Robert L. Forrester and Joseph M. Forrester, to said plaintiff on the judgment heretofore rendered in this action in favor of said plaintiff and against said defendants, including interest and costs, to this 7th day of Jan. A. D. 1907, is thirteen thousand one hundred eighty and 43/100 dollars (\$13,180.43) and it is therefore by the court, considered, ordered and adjudged that said plaintiff have and recover of and from the said Kansas City Southern Railway Company said garnishee, the full sum of thirteen thousand one hundred eighty and 43/100 dollars (\$13,180.43), together with

the costs of this action on the issues joined between said plaintiff and said garnishee, taxed at \$—— and that this judgment bear interest from the date hereof at the rate of six per cent per annum and that execution issue against said garnishee for the amount of this judgment, interest and costs and thereupon said plaintiff requests said court to make the following conclusions of law.

"Conclusions of Law Requested by Plaintiff.

1. Courts will never presume a contract to be illegal. Its illegality must be shown, and after a contract is once established, the party who desires to relieve himself of the obligations of the contract, must satisfy the Court of the illegality of the contract.

349 2. The principles of the common law are operative upon all Interstate commerce transactions, except in so far as they are modified by congressional enactment, and if a contract is valid at common law, it is valid under the statutes, unless prohibited thereby, and it devolves on the garnishee in this case to establish such invalidity.

3. Joint through rates between different railroads are subjects of agreement between railroad companies and can only be established by agreement between railroad companies, and neither under the common law nor under the statutes regulating Interstate Commerce are contracts for joint through rates prohibited, provided, the through rate agreed upon is just and reasonable, and is not less than the local rates of one of the roads entering into such agreement.

4. The fact that the Kansas City Southern Railway Company had established joint through rates with companies other than the Northern Connecting lines did not prevent it from legally making a joint through rate with the Northern Connecting Lines and accepting as its proportion of such joint through rate a less rate per hundred pounds, at the same time and for the same haul, than it received from other railroads as its proportion of the joint through rate made with them.

5. It is the duty of the railroad companies, and not the duty of the shipper to see that joint through rates are filed with the Interstate Commission and published as required by law. Where two railroad companies have never gotten together and established a joint through rate over their lines or railroads and have never filed a joint through rate with the Interstate Commerce Commission or published such a rate, the making of such a rate is open to contract between such

350 railroads, and when they make such a rate, and the through rate agreed upon between them is just and reasonable and not less than one of the locals and not unduly preferential, it is a lawful rate, and a shipper can take advantage of such rate and may make valid contract with such railroad companies for the shipment of grain at such rate and may compel each of the railroad companies to carry the grain for the proportional rate agreed upon between such railroads, and the mere failure of either or both of such railroad companies to file such rates with the Interstate Commerce Commission and publish such rates as required by the Interstate Com-

merce Laws does not deprive the shipper of such rate or invalidate the shipper's contracts with the railroad companies for such rate.

6. When a joint through rate is established between two or more railroad companies by the agreement of these companies and the proportion of the through haul is fixed by the agreement of the parties, the proportional rate thus established is the lawful rate and can only be changed by complying with subdivisions "F" Section 6 of the Interstate Commerce Law, which provides:

"No advance shall be made in joint rates, fares and charges shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the increased rates, fares or charges will go into effect. No reduction shall be made in joint rates, fares and charges, except after three days' notice to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable and may prescribe from time to time the measure of publicity which common carriers shall give to the advances or reductions in joint tariffs."

7. The contract between The Northern Connecting Lines and The Kansas City Southern Railway Company, in which the Kansas City Southern Railway Company agreed to accept eight (8¢) cents per one hundred pounds as its proportion of the joint through rate on corn and oats from Omaha, Nebraska, to Texarkana, Texas, 351 and Shreveport, Louisiana, was a good and valid contract between the railroad companies and Forrester Bros., and Forrester Bros. were entitled to have their grain hauled from Kansas City, Missouri, over the Kansas City Southern Railway Company's railroad to Texarkana, Texas, and Shreveport, Louisiana, at the rate of eight cents (8¢) per one hundred pounds. The Kansas City Southern Railway Company charged ten thousand five hundred twenty-seven and 55/100 dollars (\$10527.55) in excess of the lawful rate and are indebted to Forrester Bros. in the sum of ten thousand five hundred twenty-seven and 55/100 dollars (\$10527.55), with interest at the rate of six (6%) per cent per annum from the 7th day of March, 1902, and the plaintiff is entitled to a judgment against said garnishee for said amount, interest and costs."

Each of the above conclusions of law were made by the court and excepted to by the garnishee.

And thereupon, said garnishee requested the court to find the following conclusions of law:

Conclusions of Law Requested by the Garnishee.

I.

The court declares the law to be that, in as much as the claim made by the plaintiff in this case is one arising under and controlled by the Act of Congress commonly known as "The Interstate Commerce Act," this court is without jurisdiction to determine this cause; and that, under the law, jurisdiction thereof is vested either

with the Federal Courts or with the Interstate Commerce Commission.

Denied. Garnishee excepts.

II.

Where an interstate shipment of merchandise passes from the point of origin to the point of destination over the lines of two separate carriers, and such carriers have not, by agreement, established a joint rate over their said lines and filed and published the same in the manner required by the Interstate Commerce Act, then the only lawful charge for transportation to be applied to such shipment is the published tariff rate of the first carrier from the point of origin of the shipment to the point of connection with the second carrier, plus the published tariff charge of the second carrier from the point of connection with the first carrier to the point of destination. And any contract which the shipper may make with either or both carriers for a rate less than the sum of the rates above mentioned, is illegal and non-enforceable.

Denied. Garnishee excepts.

III.

The Court declares the law to be that even *ip* Forrester Brothers, through their representative, make a contract with the Northern Connecting lines and the Kansas City Southern for a joint rate from Omaha to Texarkana, Shreveport and other southern points, which said contract price was less than the sum of the published rate of the Northern Connecting Lines from Omaha and northern points to Kansas City, plus the legally published tariff rate of the Kansas City Southern Railway Company from Kansas City to the southern points above mentioned, neither said Northern Connecting Lines nor the Kansas City Southern Railway Company could lawfully apply such contract rate to plaintiff's shipments until the same had been filed and published in the manner required by the Interstate Commerce Act; and if such contract rate was never filed with the Interstate Commerce Commission and published, as required by said Act, or by said Commission, then such contract rate never became a lawful rate, nor could the same be lawfully applied to Forrester Brothers' shipments, described in the evidence in this case.

Denied. Garnishee excepts.

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IV.

The Court declares the law to be that on Interstate shipments of merchandise the only lawful rates applicable thereto are such rates as have been filed and published in the manner required by the Interstate Commerce Act.

Denied. Garnishee excepts.

V.

The Court declares the law to be that where two lines of railroad, under the operation of separate and independent companies, form a continuous line for interstate shipments, but the companies operat-

ing such railroads have never established a joint tariff of rates there-over, then the lawful rate for an interstate shipment passing over said railroads, is the legally published tariff rate from the point of origin of the shipment to the point of connection with the second carrier, plus the legally published tariff rate of such second carrier from such point of connection to the point of destination of the shipment.

Allowed. Plaintiff excepts.

CYRUS CRANE,

W. J. WATSON,

Attorneys for Garnishee.

B. S. GAITSKILL,

J. M. WAYDE,

Attorneys for said Plaintiff.

Endorsed: No. 161. C. H. Albers Com. Co. v. Forrester et al. K. C. S. Ry. Co. Garnishee. Journal Entry. Trial Con. at Nov. 1906 term. Filed May 16th, '07. C. N. Price, Clerk. By R. J. Dickey, Deputy.

354 In the District Court of Crawford County, Kansas, Sitting at
Pittsburg.

No. 161.

THE C. H. ALBERS COMMISSION COMPANY, a Corporation, Plaintiff,
vs.

ROBERT L. FORRESTER and JOSEPH M. FORRESTER, Partners Doing
Business under the Firm-name and Style of Forrester Bros., De-
fendants; The Kansas City Southern Railway Company, a Cor-
poration, Garnishee.

Journal Entry.

Be it remembered, that on this 22nd day of February, A. D. 1907, the same being the — day of the February 1907, term of said District Court, sitting at Pittsburg, the above entitled action came on for hearing upon the Motion of said garnishee asking said Court to grant a re-hearing and a new trial in said case, and there being present;

Hon. Arthur Fuller, Judge; J. E. Walsh, Sheriff; C. N. Price, Clerk District Court; D. H. Woolley, County Attorney; Robert Colborn, Reporter, and said plaintiff appearing by its attorneys, B. S. Gaitskill and John M. Wayde, and the said garnishee appearing by its attorneys, Cyrus Crane and W. J. Watson;

This cause came on for hearing on the regular call of the trial docket, and after hearing the arguments of counsel, and being fully advised in the premises, it is by the Court, considered, ordered and

355 adjudged that the motion for a new trial and a re-hearing be,
and the same is hereby over-ruled, to which order and ruling
of the court the said garnishee at the time duly excepted and
excepts.

And it is by the court ordered that said garnishee have ten days from the date hereof to make and serve a case-made for the Supreme Court of this State upon said plaintiff, and that execution be stayed for ten days, and that said plaintiff be given fifteen days after the service of such case-made upon the attorney of said plaintiff to suggest amendments to said case-made. And it is further by the court ordered that said case-made be settled on five days' notice.

B. S. GAITSKILL,
J. M. WAYDE,
Attorneys for Plaintiff.

CYRUS CRANE,
W. J. WATSON,
Attorneys for Garnishee.

Endorsed: No. 161. C. H. Albers, Com. Co. Plff v. Forrester Bros. Def't; K. C. S. Ry. Co. Garnishee. Journal Entry. Motion for New Trial at Feb'y '07 term. Filed May 16" '07. C. N. Price, Clerk. By R. J. Dickey, Deputy.

356 In the District Court of Crawford County, Kansas, Sitting at Pittsburg.

Case No. 161.

THE C. H. ALBERS COMMISSION COMPANY (a Corporation), Plaintiff,
vs.

ROBERT L. FORRESTER and JOSEPH M. FORRESTER, Partners Doing Business under the Firm-name and Style of Forrester Brothers, Defendants; The Kansas City Southern Railway Company (a Corporation), Garnishee.

Journal Entry.

Now on to-wit, the 26th day of February, A. D. 1907, the same being one of the judicial days of the February, 1907, term, this cause came on for hearing upon the motion of the Kansas City Southern Railway Company, garnishee, asking for one hundred and twenty days' extension of time in which to make and file a case-made for the Supreme Court, in the above entitled cause.

Plaintiff appeared by its attorneys, J. M. Wayde and B. S. Gaitskill, and the garnishee appeared by its attorneys, Cyrus Crane and W. J. Watson, and upon a full hearing of the motion and the arguments of counsel, and being fully advised in the premises, it is by the court ordered that said motion be sustained and that the garnishee be given one hundred and twenty days from the date hereof within which to make and serve a case-made in the Supreme Court, and it is by the Court further ordered that the plaintiff herein shall have fifteen days thereafter within which to suggest amendments thereto,—same to be settled and signed upon five days' notice.

And thereafter and upon the said, the 26th day of February, A. D. 1907, the said garnishee herein caused to be served upon the

356½ plaintiff herein notice in writing of the sustaining of said motion granting an extension of the time within which to make and serve a case-made.

B. S. GAITSKILL,
J. M. WAYDE,
Attorneys for Plaintiff.

CYRUS CRANE,
W. J. WATSON,
Attorneys for Garnishee.

Endorsed: No. 161. C. H. Albers Com. Co. Plff vs. Forrester Bros., Def't; K. C. S. Ry. Co., Garnishee. Journal Entry. Motion for extension of time to file case-made. Filed May 16th 1907. C. N. Price, Clerk. By R. J. Dickey, Deputy.

357 Pursuant to precipe filed by plaintiff, upon April 22nd, 1907, execution was issued, which is in words and figures as follows, to-wit:

STATE OF KANSAS.
Crawford County, ss:

The State of Kansas to the Sheriff of Crawford County, Greeting:

Whereas, on the 19th day of June, 1902, in an action then pending in the District Court of Crawford County, Sitting at Pittsburg, Kansas, wherein C. H. Albers Commission Company, a corporation, was plaintiff and Robert L. Forrester and Joseph M. Forrester, partners, doing business under the style and firm name of Forrester Bros., were defendants, the said C. H. Albers Commission Company, a corporation, obtained a judgment against Defendants, Forrester Brothers, for the sum of Ten Thousand Three Hundred Thirty-three and 72/100 (\$10,333.72) Dollars, debt, and for the further sum of — dollars, damages, together with interest on said debt and damages at the rate of Six (6) per cent. per annum from date of judgment until paid, and also for the sum of Thirteen and 30/100 (\$13.30) dollars, as costs in this behalf expended.

These are, therefore, to command you J. E. Walsh, that of said goods and chattels of the said Defendants, Forrester Brothers, you cause to be made the debt, damages, interest and costs aforesaid, together with the accruing costs on this execution and for want of goods and chattels, you cause the same to be made out of the lands and tenements of the said Defendants, Forrester Brothers, and that you have the same before the Court aforesaid in sixty days from this date, in Pittsburg, Crawford County, and State of Kansas, aforesaid, and that you then and there certify how you have executed this writ.

Witness my hand, and the seal of said Court affixed at my office in Pittsburg, Kansas, this 22nd, day of April A. D. 1907.

C. N. PRICE,
District Clerk.

By R. J. DICKEY,
Deputy Clerk.

[SEAL.]

358 Endorsed: No. 161. District Court, Crawford County, Kansas. Execution No. —. Issued April 22nd, 1907. Returnable June 21st, 1907. C. H. Albers Commission Company vs. Forrester Brothers. Execution. Filed 20 day of May, 1907. C. N. Price, Clerk District Court. By R. J. Dickey, Deputy. J. M. Wayde & B. S. Gaitskill, Attorneys for Plaintiff.

Officer's Return.

Received this writ on the 22nd day of April 1907, and after diligent search I am unable to find any property real or personal of the within named defendants and return this execution this 20th day of May, 1907, wholly unsatisfied.

Dated this 20 day of May, 1907.

J. E. WALSH, *Sheriff*.

Fees.

Ret50
Mileage	2.60
Total	\$3.10

J. E. WALSH, *Sheriff*.

359 Service of the above and foregoing case-made is hereby acknowledged this 25 day of June A. D. 1907.

J. M. WAYDE,

B. S. GAITSKILL,

Attorneys for Defendants in Error.

STATE OF KANSAS,

Crawford County, ss:

On this 10th day of July 1907, at Pittsburg, Kansas, the foregoing is presented to me by W. J. Watson Attorney for Garnis-see the other side plaintiff appearing by J. M. Wayde, I find that the foregoing case was duly made and served, and amendments duly suggested and allowed, and that this presentation is within the time provided by the order heretofore made herein.

I therefore sign, settle, certify and allow the foregoing record as and for a true case-made for review by the Supreme Court, and the clerk will attest and file the same.

[SEAL.]

ARTHUR FULLER,

Judge Thirty-eighth Judicial District, Kansas.

Attest:

C. N. PRICE,

*Clerk of the District Court of Crawford
County, Kansas, Sitting at Pittsburg.*

By R. J. DICKEY, *Deputy*.

Filed July 26, 1907. D. A. Valentine, Clerk Supreme Court.

(On back:) Filed July 10th, 1907. C. N. Price, District Clerk.
By R. J. Dickey, *Deputy*.

360 I, Robt. W. Colborn, official stenographer for the district court of Crawford County, Kansas, thirty-eighth judicial district, do hereby certify that the above and foregoing case-made contains a full, true and complete transcript of all the evidence and exceptions and rulings thereon, together with all instructions, requests for instructions, and statements and exceptions with reference thereto, and a copy of all papers, pleadings, stipulations and statements filed and given in the trial, in the district court of Crawford county, Kansas of the case of C. H. Albers Commission Company, plaintiff, vs. Robert L. Forrester and Joseph L. Forrester, co-partners composing the firm of Forrester Brotherssm defendants, and The Kansas City Southern Railway Company, garnishee, and that the same, as a whole, is a true and correct transcript of all proceedings so had.

ROBERT W. COLBORN,
*Stenographer for District Court of Crawford
County, Kansas, Thirty-eighth Judicial District.*

Subscribed and sworn to before me this 3rd day of October, 1908.

C. N. PRICE,
Clerk of District Court.

[SEAL.]

By R. J. DICKEY, *Deputy.*

361 Be it further remembered, that afterwards on Wednesday the 7th day of October, A. D. 1908, the same being one of the regular judicial days of the July 1908 Term of the Supreme Court of the State of Kansas, said court being in session at its court room in the city of Topeka, the following proceeding among others was had and remains of record at page 575 of Journal "LL" in words and figures as follows, to-wit.

362 In the Supreme Court of the State of Kansas.

No. 15627.

THE K. C. S. R'L'Y Co., Pl'ff in Error,

vs.

C. H. ALBERS COM. Co., Def't in Error.

Journal Entry of Submission.

Wednesday, October 7th, 1908.

This cause comes on to be heard on the petition in error and the transcript of the record of the district court of Crawford county; and also comes on to be heard the motion of the defendant in error to dismiss this proceeding in error; thereupon after oral argument by Cyrus Crane for the plaintiff in error and by J. M. Wayde for the defendant in error, said cause and motion are submitted on brief of counsel for both parties and taken under advisement by the court.

363 Be it further remembered, that afterwards on Saturday the 12th day of December, A. D. 1908, the same being one of the regular judicial days of the July 1908 Term of the Supreme Court of the State of Kansas, said court being in session at its court room in the city of Topeka, the following proceeding was had and remains of record at page 119 of Journal "MM" of said court in words and figures as follows, to-wit:

364 In the Supreme Court of the State of Kansas.

No. 15627.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Plaintiff in Error,

vs.

C. H. ALBERS COMMISSION COMPANY, Defendant in Error.

Journal Entry of Judgment.

Saturday, Dec. 12th, 1908.

This cause comes on for decision; and thereupon it is ordered and adjudged that the judgment of the court below be affirmed. It is further ordered that the plaintiff in error pay the costs of this case in this court taxed at \$— and hereof let execution issue.

365 And on the same day to-wit: the 12th day of December, 1908, there was filed in the office of the Clerk of the Supreme Court, the syllabus and opinion of the court in the above entitled cause, which syllabus and opinion is in words and figures as follows, to-wit:

366 No. 15627.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

v.

C. H. ALBERS COMMISSION COMPANY.

Error from Crawford County.

Affirmed.

Syllabus by the Court.

GRAVES, J.:

1. In September, 1901, it was not unlawful for connecting railroad lines to make a joint rate with a shipper for the transportation of grain from one state to another and a contract of this character was valid and binding upon the parties thereto if there was no established rate under the provisions of the interstate commerce act in force which applied to such traffic.

2. Where such a contract was entered into and after it was performed, the shipper commenced an action to recover from one of the railroad companies a sum claimed to be overcharges paid to said company upon its proportion of the rate agreed upon, and the railroad company, to avoid payment, claimed that the contract was unlawful, and void. The burden of proof was upon it to establish the facts which constituted such validity.

3. The general rule that where connecting roads, each having a legally established local rate but no joint rate which has been filed and published as required by law, can not by contract make a joint rate for less than the sum of the two locals, has no application where such roads have no established local rates.

367 4. Where connecting railroads enter into a valid contract with a shipper to transport grain from one state to another at a stipulated joint rate, in which agreement the proportion of such rate to be received by each road is specified, one of such roads can not afterwards change the amount which it is to receive under such contract by joining with other connecting lines in establishing a joint rate with them in which it secures a larger sum for the transportation of similar freight between the same points named in the former agreement.

5. In September, 1901, certain connecting railroads entered into a contract with a grain dealer whereby they agreed to transport grain for him from Omaha, Nebraska, to Texarkana, Texas, through Kansas City, Missouri, at a stipulated joint rate. No legally established joint rate was then in force on these roads between the points named. The contract specified the proportion of the stipulated rate each road was to receive. A large amount of grain was shipped over these roads upon this rate. The rate was not established as required by law. Afterwards, the shipper commenced an action against one of the roads to recover over-charges paid to it upon its proportion of such rate for said shipment. *Held* that the failure to establish the rate as required by law, can not be interposed as a bar to the action.

6. The exclusive jurisdiction conferred upon Federal courts in all actions of violations of the interstate commerce law does not apply to an action to recover overcharges paid upon shipments made under a contract which was not made in violation of that act.

7. Where a case is tried in the district court without a jury, and no special conclusions of fact are filed, this court will assume that every fact necessary to support the judgment rendered was
368 sustained by the evidence to the satisfaction of the court if there is any substantial evidence in the record tending to sustain such facts.

8. A common carrier contracted with a grain dealer to transport a large quantity of grain from Omaha, Nebraska, to Texarkana, Texas, through Kansas City, Missouri, at a stipulated rate. The shipper had an agent at Kansas City who paid freight bills and collected for grain sold. A large amount of grain was shipped under this rate. The agent at Kansas City did not know what the freight contract was, and paid the shipping bills as presented, without question, supposing that they were correct. The bills, when paid, were

forwarded to the shipper. Many of them were excessive. This fact was not discovered for some time and then the matter was taken up by the shipper and the principal traffic officers of the common carrier. A part of the overcharges were refunded and, under promise that the whole matter would be adjusted, the question was postponed from time to time when further payment by the carrier was refused. *Held* that the payment was not a voluntary payment such as will bar a recovery of the overcharges unpaid.

All the Justices concurring.

A true copy.

Attest:

Clerk Supreme Court.

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Statement.

This action was commenced in the district court of Crawford county by the C. Albers Commission Company, to recover a judgment against Robert L. Forrester and Joseph M. Forrester, partners doing business under the firm name of Forrester Bros. The Kansas City Southern Railway Company was garnisheed, the plaintiff claiming that it was indebted to Forrester Bros. for over-payments made by them upon shipments of grain made over its road. The railway company denied liability and this question constitutes the matter in controversy. Judgment was entered against the railway company and it brings the case here by petition in error. The facts out of which the dispute arises are as follows:

Forrester Bros. were engaged in buying grain in the vicinity of Omaha, Council Bluffs, and other northern points, and shipping it to Texarkana, Shreveport and other southern points for sale. They had agents employed to buy and ship the grain and others to sell it at the points of destination. They also had a financial agent located in Kansas City, Mo., through whom payments and collections were made. Shipment was made from Omaha and other points, through Kansas City, Mo. Before making any contracts for grain, Forrester Bros. sent their agent C. D. Fisher, to ascertain what could be done in obtaining a freight rate for their contemplated shipments. Fisher saw E. D. Schaufler, who was the freight traffic manager for what was called the northern connecting lines which comprise three roads running from Omaha, Council Bluffs, and other points, to Kansas City, Mo. After some negotiation with the freight officers of the Kansas City Southern Railway Company, a rate was agreed upon whereby the roads represented by Schaufler, and the Kansas City Southern Railway Company, agreed to carry the grain at a joint rate of sixteen and one half cents a hundred, from Omaha, Council Bluffs, and common points, through Kansas City, Mo., to Texarkana, and other common points. The Kansas City Southern Company was to receive the freight at Kansas City, Mo., and take it to point of destination for eight cents per hundred, that being its agreed proportion of the joint rate.

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It was further agreed that the grain should be "billed through"

from point of shipment to point of destination. In this contract, which was oral, no specific agreement was made as to the amount of grain to be shipped, nor how long the joint rate agreed upon should continue. Very soon after this contract was made, Fisher, for Forrester Bros., made a demand on the companies for 500 cars. They were unable to furnish them at once, but promised to do so as rapidly as possible, and did furnish and use over 400 cars. Shipment on this rate began in August or September, 1901, and for a time the cars were "billed through," but from considerations of convenience, they soon began to re-ship at Kansas City, Mo. The financial agent for Forrester Bros. at Kansas City, Mo., was the Kaw Grain and Elevator Company, and it paid the freight bills to Kansas City upon arrival there, and paid the Kansas City Southern, when re-shipment was made. After October 31, the Kansas City Southern demanded and received ten cents per hundred instead of eight cents, and on a part of the grain shipped, collected fourteen and fourteen and one half cents per hundred.

At the time the joint rate was made, the northern connecting lines represented by Schaufler, had no legally established rate to Kansas City, Mo., and the Kansas City Southern had no rate from Kansas City south which applied to freight shipped over the lines known as the northern connecting lines, and represented by Schaufler. On October 31, 1901, the Kansas City Southern Railway Company in connection with the Chicago & Great Western Railway Company, and other lines, established a joint rate for shipments of grain originating at St. Joseph, Atchison, Leavenworth and other common points,—which does not include Omaha or Council Bluffs,—to Texarkana, Shreveport, and common points, in which the Kansas City Southern was to receive ten cents per hundred as its proportion of the joint rate. Afterwards this rate was amended so that its proportion was fourteen cents, and by another amendment, fourteen and one half cents per hundred.

The joint rate given to Forrester Bros. was not reported 371 to the Interstate Commerce Commission and published as required by law, and therefore did not become an established legal rate. There is no direct proof that either road had a legally established and effective local rate, but there was some evidence as to a local rate from which it might be inferred that such a rate existed. This rate was six and one half cents per hundred from Omaha to Kansas City, Mo., and ten cents from there to Texarkana.

After the case had been partially tried, the jury was discharged, and the trial proceeded to the court. At the conclusion of the trial, the court filed conclusions of law. No findings of fact were found or filed. The conclusions of law read:

"1. Courts will never presume a contract to be illegal. Its illegality must be shown, and after a contract is once established, the party who desires to relieve himself of the obligations of the contract, must satisfy the court of the illegality of the contract.

"2. The principles of the common law are operative upon all interstate commerce transactions, except in so far as they are modified by congressional enactment, and if a contract is valid at

common law, it is valid under the statutes, unless prohibited thereby, and it devolves on the garnishee in this case to establish such invalidity.

"3. Joint through rates between different railroads are subjects of agreement between railroad companies and can only be established by agreement between railroad companies, and neither under the common law nor under the statutes regulating interstate commerce are contracts for joint through rates prohibited, provided, the through rate agreed upon is just and reasonable, and is not less than the local rates of one of the roads entering into such agreement.

"4. The fact that the Kansas City Southern Railway Company had established joint through rates with companies other than the Northern Connecting lines did not prevent it from legally making a joint through rate with the Northern Connecting Lines and accepting as its proportion of such joint through rate a less rate 372 per hundred pounds, at the same time and for the same haul, than it received from other railroads as its proportion of the joint through rate made with them.

"5. It is the duty of the railroad companies, and not the duty of the shipper to see that joint through rates are filed with the Interstate Commission and published as required by law. Where two railroad companies have never gotten together and established a joint through rate over their lines or railroads and have never filed a joint through rate with the Interstate Commerce Commission or published such a rate the making of such a rate is open to contract between such railroads, and when they make such rate, and the through rate agreed upon between them is just and reasonable and not less than one of the locals and not unduly preferential, it is a lawful rate, and a shipper can take advantage of such rate and may make valid contract with such railroad companies for the shipment of grain at such rate and may compel each of the railroad companies to carry the grain for the proportional rate agreed upon between such railroads, and the mere failure of either or both of such railroad companies to file such rates with the Interstate Commerce Commission and publish such rates as required by the interstate commerce laws does not deprive the shipper of such rate or invalidate the shipper's contracts with the railroad companies for such rate.

"6. When a joint through rate is established between two or more railroad companies by the agreement of these companies and the proportion of the through haul is fixed by the agreement of the parties, the proportional rate thus established is the lawful rate and can only be changed by complying with sub-division "F," Section 6 of the Interstate Commerce Law, which provides:

"No advance shall be made in joint rates, fares and charges shown upon joint tariffs, except after ten days' notice to the commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the increased rates, fares or charges will go into effect. No reduction shall be made 373 in joint rates, fares and charges, except after three days' notice to be given to the commission as is above provided

in the case of an advance of joint rates. The commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable and may prescribe from time to time the measure of publicity which common carriers shall give to the advances or reductions in joint tariffs.'

"7. The contract between the Northern Connecting Line and The Kansas City Southern Railway Company, in which The Kansas City Southern Railway Company agreed to accept eight (8c.) cents per one hundred pounds as its proportion of the joint through rate on corn and oats from Omaha, Nebraska, to Texarkana, Texas, and Shreveport, Louisiana, was a good and valid contract between the railroad companies and Forrester Bros., and Forrester Bros. were entitled to have their grain hauled from Kansas City, Missouri, over the Kansas City Southern Railway Company's railroad to Texarkana, Texas, and Shreveport, Louisiana, at the rate of eight cents (8c.) per one hundred pounds. The Kansas City Southern Railway Company charged ten thousand five hundred and twenty-seven and 55-100 dollars (\$10,527.55) in excess of the lawful rate and are indebted to Forrester Bros. in the sum of ten thousand five hundred and twenty-seven and 55-100 dollars (\$10,527.55), with interest at the rate of six (6%) per cent per annum from the 7th day of March, 1902, and the plaintiff is entitled to a judgment against said garnishee for said amount, interest and costs."

"V. (Requested by Garnishee.)

"The court declares the law to be that where two lines of railroad, under the operation of separate and independent companies, form a continuous line for interstate shipments, but the companies operating such railroads have never established a joint tariff of rates thereover, then the lawful rate for an interstate shipment passing over said railroads is the legally published tariff rate from the point of origin of the shipment to the point of connection with the second carrier, plus the legally published tariff rate of such second carrier from such point of connection to the point of destination of the shipment."

The railroad company requested the court to find conclusions of law which read:

"I. The court declares the law to be that, in as much as the claim made by the plaintiff in this case is one arising under and controlled by the Act of Congress commonly known as The Interstate Commerce Act, this court is without jurisdiction to determine this cause; and that, under the law, jurisdiction thereof is vested either with the Federal Courts or with the Interstate Commerce Commission.

"II. Where an interstate shipment of merchandise passes from the point of origin to the point of destination over the lines of two separate carriers, and such carriers have not, by agreement, established a joint rate over their said lines and filed and published the same in the manner required by the Interstate Commerce Act, then the only lawful charge for transportation to be applied to such shipment is the published tariff rate of the first carrier from the point of

origin of the shipment to the point of connection with the second carrier, plus the published tariff charge of the second carrier from the point of connection with the first carrier to the point of destination. And any contract which the shipper may make with either or both carriers for a rate less than the sum of the rates above mentioned, is illegal and non-enforceable.

"III. The Court declares the law to be that even if Forrester Brothers through their representative, make a contract with the Northern Connection lines and the Kansas City Southern for a joint rate from Omaha to Texarkana, Shreveport and other southern points, which said contract price was less than the sum of the published rate of the Northern Connecting lines from Omaha and northern points to Kansas City, plus the legally published tariff rate of the Kansas City Southern Railway Company from Kansas

City to the southern points above mentioned, neither said
375 Northern Connecting lines nor the Kansas City Southern Railway Company could lawfully apply such contract rate to plaintiff's shipments until the same had been filed and published in the manner required by the Interstate Commerce Act; and if such contract rate was never filed with the Interstate Commerce Commission and published, as required by said Act, or by said Commission, then such contract rate never became a lawful rate, nor could the same be lawfully applied to Forrester Brothers' shipments, described in the evidence in this case.

"IV. The Court declares the law to be that on Interstate shipments of merchandise the only lawful rates applicable thereto are such rates as have been filed and published in the manner required by the Interstate Commerce Act."

each of which was denied.

The court found in favor of the plaintiff and assessed the amount of recovery for overcharges paid with interest to the date of judgment, at \$13,180.43.

After this rate had been made for Forrester Bros., a memorandum tariff sheet was made and distributed among the freight agents along the line of the roads interested. By this memorandum it appeared that the rate made with Forrester Bros. would expire October 31, 1906. Neither Forrester Bros. nor any one other than the railroad employees knew of the existence of such memorandum. No steps were taken to publish it and to make it a legal rate. The officers testified that it was made by the mistake of a clerk and was not regarded as of any legal force.

376 The opinion of the court was delivered by GRAVES, J.:

The argument in this case covers a wide range of subjects connected with the interstate commerce law, and both sides of the controversy have been clearly and ably presented. The facts of the case, however, as they come here, may eliminate some of the questions discussed. The trial court not having filed conclusions of fact, we will be compelled under the long established rule of this court, to assume that it found every fact necessary to support the

judgment rendered, to be established by the evidence, if there is any testimony in the record tending to sustain such facts. *Mushrush v. Zarker et al.*, 48 Kan. 382;

Blanchard v. Jackson, 55 Kan. 247;

Thompson v. Pfeiffer, 60 Kan. 409;

Taylor v. Herron, 72 Kan. 652.

The first point presented by the plaintiff in error is that the action though prosecuted apparently for the recovery of overcharges, is in reality one to recover rebates. It is argued that the Kansas City Southern Railroad hauled the grain for Forrester Bros. as alleged, and collected the lawful rate therefor, and this action was instituted to recover a part of that rate under the plea that the company agreed to take less than the established rate. Of course if this claim were sustained by the evidence, this action would be at an end. The district court, however, did not take this view of the testimony, and we are unable to find any substantial support for this position in the facts presented by the record.

The evidence abundantly sustains the claim of the plaintiff that a contract was made for the carriage of grain for Forrester Bros., as claimed, to-wit: for a joint rate of sixteen and one half cents, of which the Kansas City Southern agreed to accept eight cents per hundred as its proportion of the rate. This contract is established by the officers who made it. There is no controversy in the evidence upon this question. The trial court would
377 not have been justified in finding otherwise.

The railroad company insists that this rate is unlawful and void, for the reasons, 1st, that it was not filed with the interstate commerce commission and published as required by the interstate commerce law, and 2nd, that it was in conflict with other rates which were legally established and existing at that time.

It is further claimed that the Kansas City Southern had an established local rate between Kansas City, Mo., and the points of destination mentioned in the Forrester rate, of ten cents per hundred, and as there was no established joint rate, one could not be made by contract for less than the sum of the two locals. As applied here this contention means that at the time when the Forrester rate was agreed to, each of the roads interested in that rate had a duly established local rate over their lines between Omaha and common points, and Kansas City, and between Kansas City and Texarkana, and common points; that as these roads had no legally established joint rate, they could not make one for less than the sum of the two locals, for the reason that such joint rate would conflict with a rate lawfully established under the interstate commerce law which would be unlawful. It is conceded that these roads could have established a joint rate at any reasonable amount, and without reference to local rates, by taking the required legal steps for that purpose. It is also claimed that the Kansas City Southern Railroad had a legally established joint rate in connection with other lines between St. Joseph, Atchison, Leavenworth, and common points, through Kansas City, to Texarkana and common points, and its proportion of such joint rate was ten cents a hundred

and that this rate was the legally established rate which applied to all freight shipped south over the Kansas City Southern having no legal rate beyond Kansas City, and therefore the Forrester Bros.' grain had to be taken under this rate. For these various reasons, it is insisted that the eight cent rate made for Forrester Bros. was unlawful and void, and that the rate collected was the valid rate at the time.

378 We can not concur in this conclusion. The facts in the record, taken in connection with the judgment of the trial court, will not sustain this position. The contention that each of the roads making the Forrester rate, had a legally established local rate, is not sustained by the evidence. No such proof was offered. There was some talk by the witnesses, of a local rate and what it was on each road, but no proof that such rate had been established under the law was presented. The contract as alleged by the plaintiff having been clearly established, the burden was upon the defendant to show by way of defense, that such contract was for some reason unlawful. If the invalidity resulted from the existence of legally established rates with which the rate relied upon by the plaintiff was in conflict, it was incumbent upon the defendant to allege and prove such fact. *Mo. Pacif. R. R. v. Relf*, recently decided by this court;

Atlanta K. & N. Ry. Co. v. Horne, 106 Tenn. 73; 59 S. W. 134;

Southern Pacif. R. R. Co. v. Redding (Texas) 43 S. W. 1061;
Southern Kansas Ry. Co. v. Burgess, 90 S. W. 189.

This was not done. In the absence of such proof we are compelled to hold, as the trial court evidently did, that there was no legally established local rates which were in conflict with the rate made for Forrester Bros., or which would in any manner affect the validity of the last named rate. The joint rate made by the Kansas City Southern in connection with connecting roads other than the northern connecting lines, and to the making of which the lines last named, and Forrester Bros. were not parties, and to which they did not consent, could not affect the joint rate previously made for Forrester Bros. A joint rate is only binding upon the lines which agree to it and shippers who ship under it. We think the existence of this rate does not affect any of the questions presented here. It appears that Forrester Bros., relying upon their contract, purchased large quantities of grain and shipped it over these contracting lines. It does not seem reasonable, therefore, that one of such lines could nullify the rate agreed upon merely by agreeing with other parties for a different rate where the shipment is between different points, and over different roads.

379 Forrester Bros. were satisfied with the rate which they made and relied upon, and do not wish to exchange it for one made by other parties, in their absence, without their knowledge, and to which they have not consented; and we are unable to see any good reason why they should be compelled to accept such a rate.

There being no rate established under the law, a rate by contract

was proper and lawful. *Wabash R. R. Co. v. Sloop*, 98 S. W. 607; *Carlisle v. Mo. Pac. R. R.* 68 S. W. 898.

Upon the point that the rate agreed to was void because it was not established under the law, several decisions have been cited, holding that rates made for a less amount than the established rate are unlawful, and the shipper will be held to pay the established schedule rate notwithstanding his contract, even when he is innocent and ignorant of the established rate. These cases do not apply here, however, for the reason that in this case there was no established rate. This was the first joint rate ever made between these roads. No local rate had been established by either road, on the route covered by this rate.

It will also be noted that this rate was made in September 1901, and shipment began thereunder immediately. The steps necessary to the legal establishment of such rate must of necessity have been taken thereafter. This the shipper could not do. We conclude, therefore, that at the time the joint rate was made for Forrester Bros., it was not in conflict with any established rate which in any manner affected its validity.

It appears that the representative of Forrester Bros. acted in good faith and had no knowledge that the rate agreed upon was not a valid rate established in accordance with the interstate commerce law. The fact that the rate agreed upon was not regularly established, was not the fault of the shipper. It was a matter over which he had no control. It was the duty of the carrier to comply with this requirement of the law. Its laches in this respect
380 can not be used by it to avoid the just consequences of its contract. The rate agreed to was fair and reasonable, being equal to the sum of what was then known as the two locals. Under the contract, the Kansas City Southern was entitled to the proportion of the whole rate that was satisfactory to it when the rate was made, and it is not now in a position to complain.

While it is true that no definite agreement was made as to the quantity of grain which Forrester Bros. might ship under this rate nor as to how long the rate should continue, yet considering the whole evidence, it is evident that the entire shipment was contemplated by both parties. Very soon after the rate was agreed upon, the representative of Forrester Bros. notified the companies that they wanted 500 cars. They were told that while such a large number could not be furnished at once, they would be supplied as rapidly as possible. Cars were furnished from time to time, and shipments made to the extent of over 400 cars.

No notice was given to Forrester Bros. that the rate had expired but on the contrary, when demand was made by them that the over-charges paid be returned, promises were made that an adjustment of the matter would be made. Under this evidence the trial court would be justified in finding as it evidently did, that the rate covered the entire shipment.

It is argued that the district court did not have jurisdiction of this case, for the reason that the interstate commerce act gives exclusive jurisdiction to the Federal courts in actions to recover over-charges

made in violation of that act. This action, however, is not one to recover over-charges paid in violation of that act. The over-charges sought to be recovered here, consist of payments made in excess of the proper charges stipulated in a contract of shipment to which the provisions of that act have no application; and, therefore, the question of jurisdiction does not arise. *Carlisle v. Mo. Pac. R. R.* 68 S. W. 898; *Wabash R. R. Co. v. Sloop*, 98 S. W. 607.

Finally it is contended that the over-charges were paid voluntarily, and therefore, can not be recovered. The payments were made by the Forrester Bros.' financial agent at Kansas City, who did not know what rate had been agreed upon, but assuming the bills presented were in accordance with the contract, made payment without objection or question. The bills thus paid were forwarded to Forrester Bros. who did not notice the fact of overpayment for sometime. When it was brought to their attention, they took the matter up with the general freight officers of the railroads, and under promise that the matter would be adjusted, the question was postponed from time to time. The courts have quite generally refused to apply the ordinary rule of voluntary payment to cases of this kind. In the case of *Louisville E. & St. L. Consolidated R. R. Co. v. Wilson*, 18 L. R. A., 105, the Supreme Court of Indiana said:

"We are of the opinion, however, that the decided weight of authority is that the payment of an overcharge of freight to a railroad company engaged as the common carrier of goods is not a voluntary payment within the ordinary meaning of that term."

In the case of *Heizerman v. R. R.* 63 Iowa, 732, it was said:

"Those who do business with the railroads never come in contact with the officers who possess authority to fix or abate rates of charges; indeed, they usually hardly know their names or where to find them. * * * These considerations take the case from the operation of the familiar rule which forbids recovery on account of payments voluntarily made without objection or protest."

In the case of *Mobile & M. R. Co. v. Steiner*, 61 Ala. 559, it was said:

"The nature of the business considered, the shipper does not stand on equal terms with the carrier in contracting for charges for transportation and if the shipper pays the rates established in violation of law by the carrier, rather than forego his services such payment is not voluntary in the legal sense, and the shipper may maintain his action for money had and received to recover back the illegal charge.

Indeed, there seems to be but little conflict in the authorities in this country holding that the payment to a railroad company engaged in the business of common carrier of an overcharge of freight for goods transported over the road of such company is not a voluntary payment, as the law interprets that term."

This rule seems to be placed upon the ground that the parties do not stand upon equal grounds, and an objection or protest would be unavailing. In the case cited above from 18 L. R. A., a large

number of cases are cited to the same effect. We think that under the facts of this case, the payment should not be held to be voluntary so as to bar a recovery, even under the ordinary rule, and certainly not under the rule stated in the above cases.

We have been unable to find any error in the action of the tri court. We concur in the controlling questions of law declared it, and think it fairly interpreted the evidence.

The judgment is therefore affirmed.

All the Justices concurring.

A true copy.

Attest:

Clerk Supreme Court.

383 And afterwards, to-wit on the 31st day of December A. D. 1908 there was filed in the office of the clerk of the supreme court, of the State of Kansas, a petition for a rehearing which petition for a rehearing is in words and figures as follows, to-wit:

384 In the Supreme Court of the State of Kansas.

No. 15627.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Plaintiff in Error,
vs.

C. H. ALBERS COMMISSION COMPANY, Defendant in Error.

Motion for Rehearing.

Comes now the plaintiff in error and moves the court to grant a rehearing of this case for the following reasons, to wit:

1st. Because the statement of the facts in this case, made by the court is erroneous in a great many particulars, as will be hereinafter pointed out.

2nd. Because the court has overlooked the controlling force of statutes and decisions which were duly presented by plaintiff in error and called to the attention of the court in brief and argument of the plaintiff in error.

3rd. Because the court having erroneously stated the facts in the case has likewise been led into the error of not applying the law then controlling to the true facts, and, therefore, has been led into rendering an opinion which is erroneous both in point of fact and point of law.

4th. Because the opinion of this court in construing the Interstate Commerce Law is directly in conflict with the decisions of the United States Circuit Court of Appeals and the United States Supreme Court.

S. N. MOORE,

CYRUS CRANE,

W. J. WATSON,

Attorneys for Plaintiff in Error.

Endorsed: No. 15627. In the Supreme Court of the State of Kansas. The Kansas City Southern Ry Co., Pl'ff in Error, vs. C. H. Albers Commission Company, Def't in Error. Motion for rehearing and brief in support thereof. Filed Dec. 31st, 1908. D. A. Valentine, Clerk Supreme Court.

Be it further remembered, that afterwards on Saturday the 6th day of February A. D. 1909, the same being one of the regular judicial days of the January 1909 term of the supreme court of the State of Kansas, said court being in session at its court room in the City of Topeka, the following proceeding among others was had and remains of record at page 261 of Journal "MM" of said court in words and figures as follows, to-wit:

And also on the same day last above mentioned the court filed its written opinion on the petition for a rehearing which opinion immediately following the Journal entry overruling the petition for a rehearing is in words and figures as follows, to-wit:

386 In the Supreme Court of the State of Kansas.

No. 15627.

THE K. C. S. RY. CO., Pl'ff in Error,
vs.

THE C. H. ALBERS COMMISSION CO., Def't in Error.

Journal Entry Denying Petition for Rehearing.

Saturday, February 6th, 1909.

Now comes on for decision the petition for a rehearing of this case; and thereupon it is ordered that said petition be denied.

387 No. 15627.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

v.

THE A. H. ALBERS COMMISSION COMPANY.

Petition for Rehearing Denied.

Opinion per Curiam:

A petition for re-hearing has been filed in this case, calling attention to a mis-statement of fact in the opinion. The mis-statement consists of a mis-use of terms in describing the rates in force on the Kansas City Southern road when the rate with Forrester Brothers was made. The rate which the Kansas City Southern road had on Kansas City south to Texarkana and other points, in connection with the lines from Atchison, St. Joseph and Leavenworth and other common points was a proportional rate, instead of a joint rate

as stated in the opinion. The difference between these rates is quite material to that road, from its theory of the case. This proportional rate was regularly established under the provisions of the interstate commerce law, and if it was applicable to the shipments made by Forrester Brothers, then no overcharges were made and no recovery should have been had by them. We do not think this rate, by whatever name designated, had any application to the Forrester Brothers' shipment.

It is claimed that a proportional rate applies to all freight shipped between points where it exists, unless some other established rate applies. As applied to the Forrester Brothers' shipment, it is claimed that the freight came to the Kansas City Southern road at Kansas City, and was re-shipped from there to Texarkana or other points, the same as shipments originating at that point; and the rule as to the rates to be applied was the same as that which controlled in all other shipments from that point. We do not concur in this

388 view. A proportional rate may apply to all freight which is not being carried under some other legal rate; but if it does, the rule has no application here. As stated in the opinion, Forrester Brothers made a contract for a joint through rate from Omaha, through Kansas City, to Texarkana. It was further agreed that shipments should be "billed through" and for a time, they were so billed. We do not understand that a proportional rate like the one in question would interfere with the making of a joint through rate such as was made with Forrester Brothers. No such contention is made. It is simply insisted that the re-shipment at Kansas City placed the freight under the same rule as to rates, that would apply if an actual bona-fide re-shipment had been made.

All of the shipments made by Forrester Brothers were through shipments from Omaha to Texarkana, and should have been "billed through". This was the contract, and no mere colorable re-shipment at Kansas City, by issuing new bills, could modify or avoid it. With this explanation, we are satisfied with the opinion.

The petition for re-hearing is denied.

A true copy.

Attest:

Clerk Supreme Court.

389 In the Supreme Court of the State of Kansas.

THE KANSAS CITY SOUTHERN R'L'Y Co., Plaintiff in Error,
vs.

THE C. H. ALBERS COMMISSION Co., Defendant in Error.

I, D. A. Valentine, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the above entitled case, and also of the opinions of the court rendered therein, as the same now appear on file in my office.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said court at my office, in Topeka, Kansas, this 10th day of March A. D. 1909.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the
State of Kansas.

390 Here follows, the original petition for a writ of error and the allowance thereof, the assignments of error and prayer for reversal, the writ of error and order of Chief Justice W. A. Johnston for issuing same, the citation and the acknowledgement of service of same, and a Copy of the Supersedeas and appeal bond:

391 UNITED STATES OF AMERICA,
State of Kansas:

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Plaintiff in
Error,

vs.

C. H. ALBERS COMMISSION COMPANY, Defendant in Error.

Petition for Writ of Error.

To the Honorable Chief Justice of the Supreme Court of the State of Kansas:

The petition of The Kansas City Southern Railway Company respectfully shows that on the 6th day of February, 1909, the Supreme Court of the State of Kansas rendered a final judgment against your petitioner, The Kansas City Southern Railway Company in a certain case wherein The Kansas City Southern Railway Company was plaintiff in error and C. H. Albers Commission Company was defendant in error, for the sum of Thirteen Thousand One Hundred and Eighty and 43/100 Dollars (\$13,180.43) and costs, as will appear by reference to the record and proceedings in said cause.

That the said Supreme Court of the State of Kansas is the highest court of said state in which a decision in said suit could be had and your petitioner claims the right to remove said judgment to the Supreme Court of the United States by writ of error under Section

709 of the Revised Statutes of the United States, because your
392 petitioner claims that the said judgment and decision of said Supreme Court of Kansas deprives your petitioner of a right, title, privilege and immunity under a certain Act of Congress of February 4, 1887, entitled "An Act to regulate commerce" and amendments thereto, commonly known as the Interstate Commerce Act, in that your petitioner claims that it is not liable in the said cause because by a proper construction of said Act and the amendments thereto the alleged contract on which this plaintiff in error is sued is illegal, void and non-enforceable in this that it is claimed that your petitioner agreed to ship grain, which originated at Omaha, Nebraska, and other common points and was to be shipped over the

lines of railroad known as the Northern Connecting lines, which are separate and distinct roads from that of your petitioner, to Kansas City, Missouri, and to be thence shipped over the road of your petitioner to Texarkana, Texas, and other common southern points at a rate less than your petitioner's tariff rate, filed with the Interstate Commerce Commission and published as required by law; and because by proper construction of said Act and the amendments thereto the claim on which your petitioner was sued by the C. H. Albers Commission Company is one for rebates on interstate shipments of grains—that is to say for rates less than the tariff rates of your petitioner, which were filed with the Interstate Commerce Commission, published as required by law, and which applied on the shipments in controversy and by reason thereof said claim was unlawful, non-enforceable and void; and because by a proper construction of said Act above mentioned, jurisdiction over the subject matter of this controversy was in the Federal courts or with the Interstate Commerce Commission and the District Court of Crawford County, Kansas, had no jurisdiction thereof.

393 All of which appears by the record of the proceedings in said cause, which is herewith submitted.

Wherefore, your petitioner prays an allowance of writ of error returnable into the Supreme Court of the United States and for citation and supersedeas and your petitioner will ever pray, etc.

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY, *Petitioner,*

By S. W. MOORE,

CYRUS CRANE & W. J. WATSON &
FRED H. WOOD,

Its Attorneys.

Let the writ of error issue as prayed February 16th, 1909.

W. A. JOHNSTON,

Chief Justice of the Supreme Court of the State of Kansas.

393a [Endorsed:] 15627. The Kansas City Southern Railway Co., Plff in Error, vs. C. H. Albers Commission Company, Dft in Error. Petition for Writ of Error. Filed Feb. 16, 1909. D. A. Valentine, Clerk Supreme Court.

394 In the Supreme Court of the State of Kansas.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Plaintiff in
Error,

vs.

C. H. ALBERS COMMISSION COMPANY, Defendant in Error.

Assignments of Error.

Now comes the plaintiff in error above named and respectfully submits that in the record proceedings, decision and the final judgment in the Supreme Court of the State of Kansas in the above entitled matter, there is manifest error in this, to-wit:

1. Because the Supreme Court of Kansas denied to the plaintiff in error a right and immunity granted to it by proper construction of the act of congress of February 4, 1887, commonly called the Interstate Commerce Act and amendments thereto, by refusing to hold that the District Court of Crawford County, Kansas in the trial of this cause committed error in refusing to sustain the motion of this plaintiff in error made immediately upon the conclusion of the opening statements, said motion being made orally and was as follows, to-wit:

"I desire to move to dismiss the garnishment proceedings in this case for the reason that it appears from the opening statement of plaintiff's counsel in which the validity of several provisions of the Interstate Act of Congress to regulate commerce is involved, and that Congress having passed an act for the regulating of interstate commerce and providing therein the tribunal before which such questions shall be settled, and those being the Federal Courts or Interstate Commerce Commission, this court is without jurisdiction over the subject matter of this action."

2. Because the Supreme Court of Kansas denied the plaintiff in error a right and immunity granted to it by proper construction of the act of Congress of February 4, 1887 and amendments thereto commonly called the Interstate Commerce Act, by refusing to hold that the District Court of Crawford County, Kansas, in the trial of this cause committed error in refusing to sustain the demurrer to the evidence interposed by this plaintiff in error at the trial upon the conclusion of the evidence offered by the defendant in error to the effect that the evidence in its entirety wholly failed to establish any liability against the plaintiff in error and was wholly insufficient to warrant a recovery against it in that it failed to show any right of action in defendant in error against this plaintiff in error.

3. Because the Supreme Court of Kansas denied the plaintiff in error a right and immunity granted to it by proper construction of the act of Congress of February 4, 1887 and amendments thereto commonly called the Interstate Commerce Act, by refusing to hold that the District Court of Crawford County, Kansas, in the trial of this cause committed error in refusing to give the following declaration or conclusion of law requested by the plaintiff in error, which on the trial was garnishee's instruction number one, to-wit:

"The Court declares the law to be that, in as much as the claim made by the plaintiff in this case is one arising under and controlled by the Act of Congress commonly known as "The Interstate Commerce Act," this court is without jurisdiction to determine this cause; and that, under the law, jurisdiction thereof is vested either with the Federal Courts or with the Interstate Commerce Commission."

4. Because the Supreme Court of Kansas denied the plaintiff in error a right and immunity granted to it by proper construction of the act of Congress of February 4, 1887 and amendments thereto commonly called the Interstate Commerce Act, by refusing to give the following instruction, which was garnishee's instruction number two, to-wit:

"Where an interstate shipment of merchandise passes from the point of origin to the point of destination over the lines of two separate carriers, and such carriers have not, by agreement, established a joint rate over their said lines and filed and published the same in the manner required by the Interstate Commerce Act, then the only lawful charge for transportation to be applied to such shipment is the published tariff rate of the first carrier from the point of origin of the shipment to the point of connection with the second carrier, plus the published tariff charge of the second carrier from the point of connection with the first carrier to the point of destination. And any contract which the shipper may make with either or both carriers for a rate less than the sum of the rates above mentioned, is illegal and non-enforceable."

5. Because the Supreme Court of Kansas denied the plaintiff in error a right and immunity granted to it by proper construction of the act of Congress of February 4, 1887 and amendments thereto commonly called the Interstate Commerce Act, by refusing to give the following instruction, which was garnishee's instruction number three, to-wit:

397 "The Court declares the law to be that even if Forrester

Brothers, through their representative, make a contract with the Northern Connecting lines and the Kansas City Southern for a joint rate from Omaha to Texarkana, Shreveport and other southern points, which said contract price was less than the sum of the published rate of the Northern Connecting lines from Omaha and northern points to Kansas City, plus the legally published tariff rate of the Kansas City Southern Railway Company from Kansas City to the southern points above mentioned, neither said Northern Connecting lines nor the Kansas City Southern Railway Company could lawfully apply such contract rate to plaintiff's shipments until the same had been filed and published in the manner required by the Interstate Commerce Act; and if such contract rate was never filed with the Interstate Commerce Commission and published as required by said Act, or by said Commission, then such contract rate never became a lawful rate, nor could the same be lawfully applied to Forrester Brothers' shipments, described in the evidence in this case."

6. Because the Supreme Court of Kansas denied the plaintiff in error a right and immunity granted to it by proper construction of the act of Congress of February 4, 1887 and amendments thereto commonly called the Interstate Commerce Act, by refusing to give the following instruction, which was garnishee's instruction number four, to-wit:

"The Court declares the law to be that on Interstate shipments of merchandise the only lawful rates applicable thereto are such rates as have been filed and published in the manner required by the Interstate Commerce Act."

7. Because the Supreme Court of Kansas in its decision, statement of facts and opinion denied to the plaintiff in error rights, and
398 immunities arising under the proper construction of the Act of Congress above mentioned, commonly called the Interstate Commerce Act, by erroneously finding:

(a) That the plaintiff in error, The Kansas City Southern Railway Company, had no rate from Kansas City, Missouri, to Texarkana, Texas, and common Southern points, which applied to freight shipped over the lines known as the Northern Connecting lines and represented by one Schaufler, when in truth and in fact the record shows that the plaintiff in error had at the time referred to filed and published in the manner required by law, its proportionate rate on grain from Kansas City to southern points and that this rate applied on grain shipped over the lines known as the Northern Connecting lines and on shipments originating at Omaha, Nebraska, and common points.

(b) In finding and holding in its opinion and statement of facts as follows:

That on October 31st, 1901, The Kansas City Southern Railway Company in connection with the Chicago & Great Western Railway Company and other lines established a joint rate for shipments of grain originating at St. Joseph, Missouri, Atchison and Leavenworth, Kansas, and other common points—which does not include Omaha, Nebraska, and Council Bluffs, Iowa,—to Texarkana and Shreveport and other points, in which the Kansas City Southern was to receive ten cents per hundred of the joint rate, whereas in truth and in fact the record shows that such rates were not *joint* rates but were proportionate rates applying on all grain which originated at a distance from Kansas City and at such places as Omaha, Nebraska, and Council Bluffs, Iowa, and applied to the shipments in controversy, and the record shows that said rates were not joint rates, as that term is used and understood in the transportation business and in the Interstate Commerce Act, but were known as proportionate rates.

399 (c) In erroneously holding that the Kansas City Southern Railway Company, plaintiff in error herein, could legally make a contract for a rate on grain originating at Omaha, Nebraska and common points and shipped to Kansas City, Missouri, over the line of another railroad company and thence transported by this plaintiff in error to Texarkana, Texas, Shreveport, Louisiana and other common points, which was less than its proportional rate, applying on such shipments, which had been duly filed with the Interstate Commerce Commission and published as required by law, and in erroneously refusing to hold that a contract to that effect was null and void and of no force and effect whatever.

(d) In erroneously holding that this plaintiff in error could, on interstate shipments of grain, make, with the shipper, to-wit, Forrester Brothers, (defendants in the original suit in the state of Kansas), a contract for a rate on grain originating at Omaha, Nebraska and shipped thence to Kansas City, Missouri over the line of another railroad company and thence south over the lines of this plaintiff in error, which was less in amount than the regular published proportional rates, which under the law and under the conduct of the transportation business, applied on the shipments in controversy in this case.

(e) In erroneously refusing to hold that on interstate shipments

passing over separate and distinct lines of railway where no joint rate has been legally established by such roads no contract could be made for through transportation over such roads at a sum less than the legally established proportional or local rates of such railway companies.

(f) In erroneously holding that the alleged contract for a rate on an interstate shipment of grain, to-wit, from Kansas City, Missouri, to Texarkana, Texas, over the line of this plaintiff in error, was enforceable after this plaintiff in error had filed with the
400 Interstate Commerce Commission and published as required by law, its tariff raising the proportional rates on grain shipments from Kansas City, Missouri to Texarkana, Texas and common southern points to an amount greater than that claimed in the alleged contract and in refusing to hold that upon the increase of said rate by such published tariff the alleged contract became void and non-enforceable and of no effect.

(g) In erroneously refusing to hold that Forrester Brothers, the defendants in the original suit in the state of Kansas or the Albers Commission Company, plaintiffs in said cause and defendant in error here, as judgment creditors of said Forrester Brothers could, in this action, after having paid the legally filed and published rate on grain shipments passing over the lines of this plaintiff in error, recover on interstate shipments, the difference between such legally filed and published proportional rates and the rates provided in the alleged contract which was claimed to have been made with this plaintiff in error, when said last named rates are less than said published rates.

(h) In erroneously refusing to hold that the claim of the C. H. Albers Commission Company, defendant in error sued on in this action was for rebates, that is to say for rates of transportation on interstate shipments, which were less than the legally filed and published tariffs of the Kansas City Southern Railway Company on grain shipments between said points and was therefore illegal, void and non-enforceable.

Wherefore, plaintiff in error prays that the final decision of the Supreme Court of Kansas in this cause be reversed by the Supreme Court of the United States.

S. W. MOORE.

CYRUS CRANE.

W. J. WATSON &

F. H. WOOD,

Attorneys for Plaintiff in Error.

400a [Endorsed:] 15627. The Kansas City Southern Railway Co. Pl'ff in Error vs. C. H. Albers Commission Company, Def't in Error. Assignments of Error and prayer for Reversal. Filed Feb. 16, 1909. D. A. Valentine, Clerk Supreme Court.

401 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the Supreme Court of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Kansas, before you, or some of you, being the highest court of law or equity of said state in which a decision could be had in the said suit between The Kansas City Southern Railway Company, garnishee, plaintiff in error, and C. H. Albers Commission Company, plaintiff, and defendant in error, wherein was drawn in question the construction of a statute of the United States, and the decision was against the right, privilege and immunity specially set up or claimed under such statute a manifest error hath happened to the great damage of the said The Kansas City Southern Railway Company, plaintiff in error, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 18th day of March, 1909, in the said Supreme Court to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States, should be done.

402 Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States the 16th day of February, in the year of our Lord 1909.

[The Seal of the Circuit Court of the United States,
District of Kansas. 1862.]

GEO. F. SHARITT,

*Clerk of the Circuit Court of the United States
for the District of Kansas.*

The above entitled matter coming on to be heard upon the petition of the plaintiff in error therein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Kansas and upon examination of said petition and record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter—

It is ordered that a writ of error be, and is hereby, allowed to this court from the Supreme Court of the United States and that the bond presented by the petitioner be and the same is hereby, approved.

W. A. JOHNSTON,

Chief Justice of the Supreme Court of Kansas.

February 16, 1909.

402a [Endorsed:] 15627. The Kansas City Southern Railway Co. vs. C. H. Albers Comm. Co. Writ of Error. Filed Feb. 16, 1909. D. A. Valentine, Clerk Supreme Court.

403 UNITED STATES OF AMERICA, ss:

To C. H. Albers Commission Company, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States at Washington within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Kansas, wherein The Kansas City Southern Railway Company, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable ——— Chief Justice of the Supreme Court of Kansas, the 16th day of February, A. D. 1909.

W. A. JOHNSTON,
Chief Justice of the Supreme Court of Kansas.

Attest:

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk Supreme Court,

By F. L. ARMSTRONG, *Dep.*

Copy of the within citation received this 18th day of February, A. D. 1909.

J. M. WAYDE,
C. O. PINGRY,
Attorneys for Defendant in Error.

Received this writ on the 16th day of February and on the 18 day of February 1909, I served the same by delivering a true and certified copy with all the endorsements thereon to the within named J. M. Wayde and C. O. Pingry and have there signatures in proof thereof.

E. J. MERRIWEATHER,
Sheriff, Crawford Co.

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[Endorsed:] 15627. K. C. Southern Rly. Co. v. C. H. Albers Com. Co. Citation. Issued Feb. 16, '09. Filed Feb. 20, 1909. D. A. Valentine, Clerk Supreme Court.

404 In the Supreme Court of the State of Kansas.

No. 15627.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Plaintiff in
Error,

vs.

C. H. ALBERS COMMISSION COMPANY, Defendant in Error.

Know all men by these presents that we, The Kansas City Southern Railway Company, as principal and The United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto C. H. Albers Commission Company in the full and just sum of Twenty Seven Thousand Dollars (\$27,000.00) to be paid the said C. H. Albers Commission Company, its successors or assigns, to which payment well and truly to be made, we bind ourselves, our successors and assigns jointly and severally, firmly by these presents.

Sealed with our seals and dated this 16th day of February in the year of Our Lord nineteen hundred and nine.

Whereas, lately at a session of the Supreme Court of the State of Kansas in a suit pending in said court between The Kansas City Southern Railway Company, plaintiff in error, and C. H. Albers Commission Company, defendant in error, a final judgment was rendered against the said plaintiff in error, and the said The Kansas City Southern Railway Company, plaintiff in error, having obtained from said court a writ of error to reverse the judgment in the aforesaid suit and the citation directed to said C. H. Albers Commission Company is about to be issued, citing and admonishing it to be and appear at the Supreme Court of the United States to be holden at Washington, D. C.

Now, therefore, the condition of this obligation is such that if the above named The Kansas City Southern Railway Company shall prosecute said writ to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

In witness whereof the said principal and the said surety have caused this instrument to be executed by their duly authorized officers and their corporate seals to be hereunto affixed this 16th day of February, 1909.

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY,
By H. VISSCHER, *Treasurer.*

Attest:

R. J. McCARTY,

Assistant Secretary.

[SEAL.]

THE UNITED STATES FIDELITY
& GUARANTY COMPANY,
By THOMAS H. RIDGE,
J. L. CROSS,
Its Attorney in Fact.

Approved to operate as a supersedeas this 16th day of Feb., 1909.

W. A. JOHNSTON,
Chief Justice.

Endorsed: No. 15627. The Kansas City Southern Railway Co. vs. C. H. Albers Commission Co. Supersedeas & Appeal Bond. Filed Feb. 16th, 1909. D. A. Valentine, Clerk Supreme Court.

405 STATE OF KANSAS, ss:

Supreme Court.

I, D. A. Valentine, Clerk of the said court, do hereby certify that there was lodged with me as such clerk on February 16th, 1909, in the matter of the Kansas City Southern Railway Company, a corporation, versus The C. H. Albers Commission Company, a corporation,

1. The original bond of which a copy is herein set forth.

2. Two copies of the writ of error, as herein set forth,—one for the defendant in error and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in Topeka, Kansas, this 10th day of March, 1909.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of Kansas.

406 UNITED STATES OF AMERICA, ss:

Supreme Court of Kansas.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Kansas, in the City of Topeka, this 10th day of March, A. D. 1909.

[Seal Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of Kansas.

Endorsed on cover: File No. 21555. Kansas Supreme Court. Term No. 173. The Kansas City Southern Railway Company, plaintiff in error, vs. C. H. Albers Commission Company. Filed March 16th, 1909. File No. 21555.

MAY 21 1911
JAMES H. HARRIS

IN THE
SUPREME COURT
OF THE
UNITED STATES

October Term 1911

THE KANSAS CITY SOUTHERN RAIL-
WAY COMPANY,

Plaintiff in Error.

vs.

C. H. ALBERS COMMISSION COMPANY,

Defendant in Error.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR

JOHN M. WAYDE,
CARL O. PINGRY,
PHILIP P. CAMPBELL,
Attorneys for Defendant in Error.

IN THE
SUPREME COURT
OF THE
UNITED STATES

October Term 1910

THE KANSAS CITY SOUTHERN RAIL-
WAY COMPANY,

Plaintiff in Error.

vs.

C. H. ALBERS COMMISSION COMPANY,

Defendant in Error.

} No. 173

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

On the 7th day of April, 1902, the C. H. Albers Commission Company commenced an action in the District Court of Crawford County, Kansas, against Robert L. Forrester and Joseph M. Forrester, partners doing business under the style and firm-name of Forrester Brothers, to recover eleven thousand (\$11,000) dollars on an account for money had and received. (Printed record, pp. 4, 5, and 6.) On May 26, 1902, Forrester Brothers filed their answer to the petitions of the plaintiff in this action by which they entered a general appearance in the case, admitted the incorporation of the plaintiff and the partnership of the

defendants, and made a general denial as to the other matters contained in the petition. (Printed record, p. 11.) On the 19th day of June, 1902, this case came on for hearing on the issues joined between the plaintiff and the defendants and judgment was rendered in favor of the C. H. Albers Commission Company and against Forrester Brothers for the sum of ten thousand, three hundred thirty-three and 72-100 (\$10,333.72) dollars, together with the costs of the action. The judgment also provided that it should draw interest at the rate of six per cent. per annum from its date. (Printed record, pp. 11 and 12.) At the commencement of this action against Forrester Brothers garnishment proceedings were instituted against The Kansas City Southern Railway Company, the plaintiff in error. The plaintiff's affidavit in garnishment was as follows: (Printed record p. 7)

AFFIDAVIT IN GARNISHMENT.

(Omitting Caption.)

"State of Kansas,

Crawford County, ss.

J. M. Wayde, of lawful age, being first duly sworn, upon his oath deposes and says that he is one of the attorneys for the plaintiff in the above entitled action; that said plaintiff is a non-resident corporation, that said defendants are both non-residents of the State of Kansas; that said plaintiff has brought its action against said defendants to recover damages upon contract in the sum of eleven thousand dollars with interest thereon at the rate of six per

cent. per annum from the several dates stated in the petition of said plaintiff, filed in this case to which reference is hereby made; that the amount of said plaintiff's claim against said defendants herein, over and above all offsets, is the sum of eleven thousand dollars and interest; said affiant states that he verily believes that the Kansas City Southern Railway Company, a corporation, and doing business within said county, is indebted to said defendants and has property real and personal in its possession and under its control belonging to said defendants and that said defendants have not property liable to execution sufficient to satisfy said plaintiff's demand against them and that the indebtedness and property of said defendants in the hands of said railway company to the best of the knowledge and belief of said affiant, is not by law exempt from seizure or sale upon execution, that said defendants claim a joint and several liability against said railway company.

J. M. WAYDE.

Subscribed and sworn to before me this 7th day of April, A. D. 1902.

(Seal)

FRANK O'REILLY,

Clerk of the District Court.

By FRANK ROBINSON,

Deputy Clerk."

Garnishment summons was issued by the Clerk of the District Court and served on the Kansas City Southern Railway Company. (Printed record, pp. 8 and 9.) On April 26, 1902, the Kansas City Southern Railway Company filed its answer as garnishee in this action, which

answer omitting the caption, was as follows: (Printed record, p. 8.)

(Affidavit of Garnishee.)

“State of Missouri,

County of Jackson, ss.

Cyrus Crane. being first duly sworn, says that he is attorney and agent for the Kansas City Southern Railway Company, garnishee in the above entitled cause; that said garnishee is a corporation, and affiant makes this affidavit for it and on its behalf; that on the 7th day of April, 1902, said garnishee was served with a garnishee's summons in the above entitled action; that said garnishee was then and is now in no manner and upon no account indebted or under liability to the defendants, Robert L. Forrester and Joseph M. Forrester, co-partners, composing the firm of Forrester Brothers, nor to either of said defendants, nor to said co-partnership; that said garnishee then had and now has in its possession or under its control no real estate and no personal property, effects or credits of any description belonging to said defendants or either of them, or in which they or either of them may have any interest, and is in no manner liable as garnishee in this action.

CYRUS CRANE.

Subscribed and sworn to before me this 25th day of April, 1902.

(Seal)

LESLIE J. LYONS,

Notary Public within and for Jackson County, Missouri.

My commission expires May 31st, 1905.”

PLAINTIFF ELECTED TO TAKE ISSUE ON ANSWER OF GARNISHEE.

The plaintiff in the trial court elected to take issue on the answer of the garnishee and caused a notice in writing to that effect to be served on the garnishee in accordance with the state laws of Kansas. (Printed record, p. 106.) Under the Kansas practice in garnishment proceedings in the district court the affidavit in garnishment is treated as the petition of the plaintiff, and the answer of the garnishee is treated as the answer of the garnishee, and the service of the notice on the garnishee, that its answer is unsatisfactory to the plaintiff in the garnishment suit are the only pleadings required. The state laws of Kansas which are applicable in garnishment proceedings are found in the General Statutes of Kansas 1909 and are as follows:

GARNISHMENT STATUTES OF KANSAS.

“5821. The proceeding 228. Any creditor shall be entitled to proceed by garnishment in the district court of the proper county against any person, excepting a municipal corporation, which shall be indebted to or have any property, real or personal, in his possession or under his control belonging to such creditor's debtor, in the cases, upon the conditions and in the manner hereinafter described.

5822. Affidavit to be filed 229. Either at the time of the issuing of the summons, or at any time thereafter before final judgment in any action to recover damages founded upon contract, express or implied, or upon judgment or decree, or at any time after the issuing in any case of an execution against property and before the time when

it is returnable, the plaintiff or some person in his behalf, may file with the clerk an affidavit stating the amount of the plaintiff's claim against the defendant or defendants over and above all off sets, and stating that he verily believes that some person, naming him, is indebted to or has property, real or personal, in his possession or under his control belonging to the defendant (or either or any of the defendants) in the action or execution, naming him, and that such defendant has not property liable to execution sufficient to satisfy the plaintiff's demand, and that the indebtedness or property mentioned in such affidavit is to the best of the knowledge and belief of the person making such affidavit not by law exempt from seizure or sale upon execution. Any number of garnishees may be embraced in the same affidavit and summons hereinafter provided for; but if a joint liability be claimed against any it shall be so stated in such affidavit, and the garnishee named as jointly liable shall be deemed jointly proceeded against.

5823. Bond required. 230. The order of garnishment shall not be issued by the clerk until an undertaking on the part of the plaintiff has been executed by one or more sufficient sureties, approved by the clerk and filed in his office, in a sum not exceeding double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay to the defendant all damages which he may sustain by reason of such garnishment if the order be wrongfully obtained; but no undertaking shall be required where the party or parties defendant are all non-residents of the state or a foreign corporation.

5824. Issue and service of summons. 231. Upon

the filing of such affidavit a garnishee summons shall be issued by the clerk and served upon the defendant or his attorney of record, and each of the garnishees, in the manner provided for service of summons, and shall be returned with proof of service in five days. The garnishee summons may be served by the sheriff, or any other person not a party to the action, and shall be substantially in the following form:

In District Court,County, A. B.,
Plaintiff, vs. C. D., Defendant, and E. F., Garnishee.—
The State of Kansas to said Garnishee: You are hereby
summoned, pursuant to the affidavit filed herein, as garni-
shee of the defendant, C. D., and required on or before the
return day, to-wit,..... 19....., to answer accord-
ing to law whether you are indebted to or have in your
possession or under your control any property, real or
personal, belonging to such defendant, and file a copy of
your answer with the clerk of this court; and in case of
your failure so to do you will be liable to further proceed-
ings according to law. Of which the said defendant will
also take notice.

Witness my hand and the seal of said court at
in said county thisday of, 19.....

.....
Clerk of District Court,
.....County.”

“5826. Affidavit of non-liability; how controverted.
233. Within twenty days from the service of such garni-
shee summons the garnishee may, if the truth warrant,

file with the clerk of the court in which action is pending his affidavit, substantially in the following form:

.....Court,County. —A.
B., Plaintiff, vs. C. D., Defendant, and E. F., Garnishee.
.....County,ss:—E. F., being
duly sworn, says that on theday of, A. D.
19....., he was served with a garnishee summons in the
above entitled-action; that he was then and now is in no
manner and upon no account indebted or under liability to
the defendant (naming him), and that he then had and now
has in his possession or under his control no real estate and
no personal property, effect, or credits, of any description,
belonging to said defendant or in which he has any interest;
and is in no manner liable as garnishee in this action. Sub-
scribed and sworn to before me, this day of
....., A. D. 19.....

Thereby the proceedings against such garnishee shall be deemed discontinued, and the plaintiff shall pay the garnishee two dollars for his costs, unless within twenty days thereafter the plaintiff serve notice on such garnishee that he elects to take issue on his answer as garnishee, and will maintain him to be liable as garnishee; in which case the issue shall stand for trial as a civil action, in which the affidavit on the part of the plaintiff shall be deemed the petition and the garnishee's affidavit the answer thereto.

5827. What garnishee shall state in other than non-liability affidavit. 234. Unless the garnishee shall make the affidavit provided for in the preceding section he shall, within twenty days from the service of the garnishee summons, file an affidavit in which he shall state:

First.—Whether he was at the time of the service of the garnishee summons or has since become indebted or under any liability to the defendant named in the notice in any manner or upon any account, specifying, if indebted or liable, the amount, the interest thereon, the manner in which evidenced, when payable, whether an absolute or contingent liability, and all the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness he may set forth all the facts and circumstances concerning the same, and submit the question to the court.

Second.—Whether he held at the time aforesaid or holds the title or possession of any real estate, or any interest in land of any description or of any personal property, effects or credits, or any instruments or papers relating to any such belonging to the defendants, or in which he is in any wise interested; and if he shall admit such, or be in doubt respecting the same, he shall set forth a description of such property, and all the facts and circumstances concerning the same, and the title, interest, or claim of the defendant in or to the same.

Third.—If he shall claim any set-off or defense to any obligation, indebtedness or liability, or any lien or claim to such property, he shall set forth the facts and circumstances thereof fully.

Fourth.—He may state any claim of exemption from execution on the part of the defendant, or other objection

known to him against the right of the plaintiff to apply upon his demand the indebtedness or property disclosed.

Fifth.—If he shall disclose any indebtedness or the possession of any property to which the defendant, and any other person as well, makes claim, he may set forth the names and residences of such other claimants, and so far as known, the nature of their claims.”

“5829. Garnishee answer conclusive unless controverted. 236. The answer of the garnishee shall in all cases be conclusive of the truth of the facts therein stated, unless the plaintiff shall within twenty days serve upon the garnishee a notice in writing that he elects to take issue on his answer; in which case the issue shall stand for trial as a civil action, in which the affidavit on the part of the plaintiff shall be deemed the petition, and the garnishee’s affidavit the answer thereto. The plaintiff may in all cases move the court, upon the answer of the garnishee, and of the defendant, if he shall also answer, for such judgment as he shall be entitled to thereon, but any such judgment shall be no bar beyond the facts stated in such answer.

5830. Officer may answer for corporation; agent or attorney for other garnishee. 237. The answer of a corporation summoned as a garnishee may be made by an officer thereof; and of any other garnishee, by an agent or attorney, in his behalf, who shall be acquainted with the facts.”

“5832. Proceeding deemed an action; trial when not in aid of execution; judgment in proceeding. 239. The

proceedings against a garnishee shall be deemed an action by the plaintiff against the garnishee and defendant, as parties defendant, and all the provisions for enforcing judgments shall be applicable thereto; but when the garnishment is not in aid of an execution, no trial shall be had of the garnishee action until the plaintiff shall have judgment in the principal action, and if the defendant have judgment, the garnishee action shall be dismissed with costs. The court shall render such judgment in all cases as shall be just to all parties, and properly protect their respective interests, and may adjudge the recovery of any indebtedness, the conveyance, transfer or delivery to the sheriff, or any officer appointed by the judgment, of any real estate or personal property disclosed or found to be liable to be applied to the plaintiff's demand, or by the judgment pass the title thereto; and may therein, or by its order when proper, direct the manner of making sale and of disposing of the proceeds thereof, or of any money or other thing paid over or delivered to the clerk or officer. The judgment against a garnishee shall acquit and discharge him from all demands by the defendant or his representatives for all money, goods, effects or credits paid delivered or accounted for by the garnishee by force of such judgment."

"5835. Liability of garnishee from time of service.
242. From the time of service of the summons upon the garnishee he shall stand liable to the plaintiff to the amount of the property, moneys, credits and effects in his possession or under his control, belonging to the defendant or in which he shall be interested, to the extent of his right

or interest therein, and of all debts due or to become due to the defendant, except such as may be by law exempt from execution. Any property, moneys, credits and effects held by a conveyance or title, void as to the creditors of the defendant, shall be embraced in such liability. In case such moneys, credits and effects in the possession or under the control of the garnishee shall exceed the amount of the plaintiff's claim, the garnishee shall stand liable to the plaintiff only for the amount of the plaintiff's claim as disclosed by the affidavit provided for in section 229, together with such further amount as shall be equal to all costs and damages which the plaintiff may recover in the action and garnishee proceedings."

THE TRIAL-JURY WAIVED

Under the pleadings thus formed the issues between the C. H. Albers Commission Company, the plaintiff in the trial court, and the Kansas City Southern Railway Company, the plaintiff in error, were tried without any other pleadings in the case. The question of fact being whether or not The Kansas City Southern Railway Company was indebted to Forrester Brothers at the time the garnishment proceedings were instituted or in any way liable to Forrester Brothers, and if so the amount of the indebtedness of The Kansas City Southern Railway Company to Forrester Brothers. A jury was empaneled to try the issues between the C. H. Albers Commission Company and The Kansas City Southern Railway Company, but during the progress of the trial it was agreed between the attorneys for the plaintiff and the attorneys for the garnishee that

the jury should be discharged and that all questions of fact should be submitted to the trial court without a jury on the evidence which had already been introduced and such further evidence as either side should introduce. (Printed record, pp. 117, 283.)

THE JUDGMENT OF THE TRIAL COURT.

On the issues between the plaintiff in the trial court and the garnishee the trial court rendered judgment as follows: (Printed record, pp. 284, 285.)

"Upon the evidence heretofore introduced upon the issues joined between the said plaintiff and the said garnishee and upon the proofs offered and the arguments of counsel for said plaintiff and said garnishee, said cause was submitted to said court, and said court after full consideration does find the issues in favor of said plaintiff against said garnishee, and said court further finds that at the date of the service of summons in garnishment upon said garnishee in this case, said garnishee, The Kansas City Southern Railway Company, was indebted to the said firm of Forrester Brothers, the above named defendants, in the sum of ten thousand five hundred twenty-seven and 55-100 dollars (\$10,527.55) and the court further finds that said sum bears interest at the rate of six per cent. per annum from the 7th day of April, A. D. 1902 to the date of this judgment and the court further finds that the amount due from said defendants, Robert L. Forrester and Joseph M. Forrester, to said plaintiff on the judgment heretofore rendered in this action in favor of said plaintiff and against said defendants, including interest and costs, to this 7th

day of January, A. D. 1907, is thirteen thousand one hundred and eighty and 43-100 dollars (\$13,180.43) and it is therefore by the court, considered, ordered and adjudged that said plaintiff have and recover of and from the said The Kansas City Southern Railway Company said garnishee, the full sum of thirteen thousand one hundred eighty and 43-100 dollars (\$13,180.43), together with the costs of this action on the issues joined between said plaintiff and said garnishee, taxed at \$..... and that this judgment bear interest from the date hereof at the rate of six per cent per annum and that execution issue against said garnishee for the amount of this judgment, interest and costs and thereupon said plaintiff requests said court to make the following conclusions of law." (The conclusions of law are found on pages 285, 286, 287, 288 of printed record.) The court also found "The contract between The Northern Connecting Lines and The Kansas City Southern Railway Company, in which The Kansas City Southern Railway Company agreed to accept eight (8c.) cents per one hundred pounds as its proportion of the joint through rate on corn and oats from Omaha, Nebraska, to Texarkana, Texas, and Shreveport, Louisiana, was a good and valid contract between the railroad companies and Forrester Brothers, and Forrester Brothers were entitled to have their grain hauled from Kansas City, Missouri, over the Kansas City Southern Railway Company's railroad to Texarkana, Texas, and Shreveport, Louisiana, at the rate of eight cents (8c.) per one hundred pounds. The Kansas City Southern Railway Company charged ten thousand five hundred twenty-seven and 55-100 dollars

(\$10,527.55) in excess of the lawful rate and are indebted to Forrester Brothers in the sum of ten thousand five hundred twenty-seven and 55-100 dollars (\$10,527.55), with interest at the rate of six (6 per cent.) per cent. per annum from the 7th day of March, 1902, and the plaintiff is entitled to a judgment against said garnishee for said amount, interest and costs." (Printed record, p. 286.)

No other findings of fact were made by the trial court. After the judgment was rendered in favor of the C. H. Albers Commission Company and against the garnishee, conclusions of law were made by the trial court. (These are found on pages 286 to 288 of the printed record.)

STATEMENT OF PLAINTIFF'S CASE.

At the beginning of the trial the opening statement for the C. H. Albers Commission Company was made by Paul F. Coste, Esq. This statement was as follows:

“If it please the court, and gentlemen of the jury:

Now that we may understand the evidence better as it is brought gradually before you in this trial, I want to give you practically the substantial history of the transactions that are involved in this case; also the names of the different parties that you will hear in the course of the trial and what they represent and who they are in relation to each other. Now in the first place I want to say something in regard to the nature of this case; the plaintiff in the case is the C. H. Albers Commission Company, of St. Louis, they are buyers and sellers of grain. Forrester Brothers are defendants in the case; they are also grain dealers and their offices are in St. Louis. Sometime before the instituting of this suit Forrester Brothers failed, leaving considerable indebtedness to pay; some of this indebtedness was to the C. H. Albers Commission Company, and that

indebtedness amounted exactly to \$10,333.72. Now at the time of this failure of Forrester Brothers, Forrester Brothers had been engaged for some time in collecting a claim which they had against The Kansas City Southern Railway Company. That claim was for altogether 345 cars of corn and oats, principally corn and some oats, which were shipped from Omaha down to Texarkana in Texas and surrounding points. Now the claim which Forrester Brothers had against The Kansas City Southern was for over-charges on this freight. They claim they had a contract with The Kansas City Southern Railway Company and another railroad running north of Kansas City; their own agents transacted those arrangements by which contract The Kansas City Southern was to get 8 cents a hundred pounds for freight coming through Kansas City and going on south. As a matter of fact, as we will show you, bills were presented by The Kansas City Southern for rates exceeding that 8 cents a hundred rate; they were at one time 10 cents and another 14 cents. This is one of the kind of suits that are frequently brought by creditors where they are trying to reach the funds in the hands of the third person that are coming to the person who owes them. So you see in this case the Albers Commission Company had this claim for \$10,333.72 against Forrester Brothers and when Forrester Brothers failed and had no other valuable property in St. Louis or anywhere else, except this claim against The Kansas City Southern, the Albers Commission Company brought suit in their place to establish its claim for \$10,333.72 against Forrester Brothers and at the same time reach whatever claim for over-charge was owing

from The Kansas City Southern Railroad Company to Forrester Brothers. And if they succeed in establishing this latter indebtedness then they may apply such part as may be found due and owing from The Kansas City Southern to Forrester Brothers on their claim against Forrester Brothers. Now that is the whole situation.

This is called a garnishment suit ordinarily among lawyers, and the first part of this garnishment suit has been completed and is not before you. If you gentlemen find that there is anything now due from The Kansas City Southern Railway Company to Forrester Brothers, that amount can be applied to satisfy this judgment of the Albers Commission Company which we already have on the records of this court against Forrester Brothers.

Now as to the history of this transaction. Forrester Brothers in the year 1901 were engaged in buying and selling grain out west here, that is in Iowa, Nebraska and that neighborhood, and buying it up there and then making sales of it down in Texarkana. As it happens that year there was a drought in the neighborhood of Texarkana and there was a good market. Forrester Brothers was nearly ready to do business by buying whatever they could and transporting it down to the Texas market; for that purpose they had two agents employed in the western part of the country, one of them was C. V. Fisher, that gentleman back of Mr. Wayde, the other was E. F. Catlin. Mr. Fisher's business was to buy the grain up in that Omaha neighborhood; Mr. Catlin's business was to make the sales of the grain down south. Now there is a third agent that you will hear of in the course of the trial, and that is the Kaw, Grain &

Elevator Company, of Kansas City; they were then the financial agents of Forrester Brothers, and settled for the purchases of this grain, and also the transportation costs. Now at the time Fisher, for Forrester Brothers, was ready to make the purchases of grain for this purpose, he wanted, of course, to know, for the purpose of ascertaining what price he could afford to pay the farmers, the producers of the grain, and also what price they could afford to make to the purchasers of the grain around Texarkana, what the cost would be for transporting this grain all the way from Omaha and Council Bluffs neighborhood, where it was bought down to Texarkana. That, you can see, was the basis of this whole transaction of purchase and sales. Then Mr. Fisher went to the railroad to see what could be done in this matter. In doing so he approached a Mr. Schaufler, the general freight agent of what was known as the Northern Connecting Lines; this is a road running into Kansas City from this Omaha neighborhood. Mr. Schaufler was the man to make the rate for this road, and of course that would cover the portion from Omaha into Kansas City. Mr. Fisher said he had a large amount of grain that he could and would ship if he got proper freight rates over that road, and also over another road going south; that road was to be The Kansas City Southern. Mr. Fisher asked Mr. Schaufler, after ascertaining that Mr. Schaufler's road was willing to go into a through rate on this grain, to see the officers of The Kansas City Southern road and see what the price or rate was for which they would agree to carry the grain over that part of the entire haul. Of course the grain was to be hauled from Omaha and Council Bluffs

through Kansas City on south. The connecting lines they get together and agree upon a through rate, and that through rate for a long distance is usually put to the minimum, giving the purchaser the benefit of the very lowest possible rate for a long distance. The evidence will show that Mr. Schaufler, being so requested, went to see the officers of The Kansas City Southern; those officers were Mr. Hanley, who was the general traffic manager of the road at that time, and a Mr. Smythe, the general freight agent. Mr. Schaufler explained what the transaction was to be, that it was to be a considerable or large amount of grain, or words of that sort, and wanted to know what they could do for their part of the haul; and intimated if they would agree upon 8 cents as their division of the rate for The Kansas City Southern, he could make a satisfactory rate for his road, which put together would make a through rate which would enable the shippers to conduct a profitable business in shipping this grain. That 8 cent rate of The Kansas City Southern was agreed upon. And after it was agreed upon, about ten days or so later, Mr. Schaufler then heard from Mr. Fisher and he said "go down and tell The Kansas City Southern I will need in the neighborhood of 500 cars at once," and that seemed to stagger them, as there was quite a blockade, there was a scarcity of cars at that time and he says "we cannot promise to furnish you them at once but will furnish them as soon as possible." This was in the month of October the grain began to come down, and you will see from the evidence the matter of furnishing cars was more or less slow, very slow, in fact, some little of it was moved in October, and

the bulk of it came along in November, December and January; December and January being the heavy months, and some in February and March. During this period right after October The Kansas City Southern began to put in bills for their share of this business at ten cents a hundred pounds instead of eight cents, which we will show it had contracted for, making an excess of two cents; later on it put in its bills for fourteen cents for their part, an excess of 6 cents; and later on an excess of $6\frac{1}{2}$ cents. The shippers at that time had made their contracts, they were bound to carry their grain down in Texas and deliver it or be in default. Mr. Fisher and some few other gentlemen representing Forrester Brothers went to the chief officer of The Kansas City Southern and protested and insisted that no more be charged than the contract rate of 8 cents.

There is another thing in this case that the evidence will develop; it seems that the intention of the railway and shippers was that this grain should go right through from its origin to Texarkana, and it was started out that way. Now the railroads, for some reason that is not yet explained, say that for their convenience in handling this freight, the billing, the weigh bills, originally issued as through bills, were not allowed to go through, but they broke in two the haul at Kansas City so far as the billing was concerned. And in this way The Kansas City Southern came to issue new bills as though the shipment originated at Kansas City and went down to Texarkana, but you will notice that was merely a matter of form; it was the same grain that was contracted for at the through rate, and the same grain that was to go down. These expense bills involved, as we claim

the excess charges, and they will be shown you and you can examine them. They will show that the excess amounts to \$10,333.72. Now that is about all that is to be said about the character of this transportation, how this claim originated.

The counsel of the defendant company, or garnishee, as the railroad company is called, will have perhaps a good deal to say to you before this case is over about what is known as the Interstate Commerce Act. It was an act of Congress, and the object of the act was to prevent railroads from granting low rates to some shippers and high rates to other shippers. The Kansas City Southern Railway Company for some reason of its own insisted on getting more than its contract rate, and we are trying to get back money which they ought never to have collected from us. They will tell you something about rebates; rebates are things that this Interstate Commerce act prohibits; not because they are money wrongfully taken from the shipper, but money wrongfully returned to the shipper. The shipper is given the rate that everybody must pay, and there is a secret rate made between the shipper and the railroad company that after the shipper has pretended to pay this usual rate that everybody pays, that they will give him back some of that; in that way giving him a lower rate. Now I will say before you have heard any of the evidence that there is nothing, absolutely nothing of that sort of the case." (Plat-
ed record, pages 12, 13, 14, 15 and 16.)

THE STATEMENT OF GARNISHEE'S DEFENSE.

Following the statement of Mr. Paul F. Coste was the statement of Cyrus Crane, attorney for the garnishee, which was as follows :

"May it please the court, and gentlemen of the jury :

In the last part of Mr. Coste's opening statement he got down pretty close to the merits of the proposition, and I want to state this also to you so you will understand it exactly. In order to do that it is necessary for me to ask you to follow as carefully as you can what I am about to say to you in regard to the merits of the case, because a good deal of this testimony will appear in depositions. I am sorry that all of the witnesses can not be here so they could be submitted to an examination before you, because I know if you can get the facts fairly before you, although it may be done, you will find that there is much in the case that will be of great interest to you all. Now then this as the other side says, is a suit to recover over-charges ; and down in the last end of the statement, knowing that I would state what it is, that it is a suit to recover rebates, or ask the company to pay rebates, he starts to pave the way for that statement ; but gentlemen, the facts in the case are about this : this Company, Forrester Brothers, were in the grain business ; they had two representatives, Fisher and Catlin, Fisher up at Omaha and Catlin at St. Louis. And they conceived the idea of selling a large quantity of grain, and that

if they could get a cut rate on their shipments they could make a very handsome profit. So they go to Mr. Schaufler of the Northern Connecting Lines, as they are called; those are the lines between Omaha and Kansas City, you need not bother with the names further than to recall them as the Northern Connecting Lines for that is the way they are spoken of in the testimony. That line is a line wholly distinct and separate from The Kansas City Southern, as distinct as the Missouri Pacific or the Frisco. These gentlemen go to Mr. Schaufler, the traffic agent for that road, and they arrange for a rate from Omaha down to Kansas City. That rate was what we call a cut rate, that is, it is a rate less than was given to other shippers desiring to make shipments. Now, gentlemen, there would be nothing wrong or improper about that if it were not for the fact that it is absolutely against the law. And that is this way. The Congress of the United States has passed a law which provides that on interstate shipments made from one state to another, Congress has control of that kind of business that the railroad companies must give the same rate to all people on the same kind of business. The simple purpose of that, gentlemen, is to prevent one man being able to ruin his competitor by having an advantage in freight rates, or one farmer, for that matter, being able to compete in an unfair way against his neighbor by being able to deliver his goods on the market cheaper than the other man. So they passed this law, that all rates must be uniform between given points on the same kind of commodities. But these people got, as I say, the cut rate from Omaha to Kansas City, and they have the opinion that they want

still further concessions, so they ask this man Schaufler to go and see The Kansas City Southern people at Kansas City and see if he could not get a cut rate from Kansas City to the Southern points they speak of, Texarkana and Shreveport, on the Southern, so they would make a pretty good profit. Now you will find that they might be kind o' sugared up and coated under the name of a proportion of the joint through rates; but the evidence will show that no matter what name you call it by, when you get right down to the merits of it it was nothing but an attempt to get a cut rate less than the general public were charged for that same service by The Kansas City Southern. And the traffic manager of The Southern talked this matter over with Mr. Schaufler; he told them he was anxious to get business for his road and says "I want you to help me out"; put it on a personal ground. And The Kansas City Southern,—their man did a thing that was not right at that point, they agreed that for a short time they would take 8 cents, although their legal lawful rate at that time was 10 cents. That was the rate that every other shipper had to pay on that kind of commodity, and it was the only rate they had a legal right to charge. But they did wrong, and they told Schaufler for a short time they would help him out and make an 8 cent rate down to the south. Now gentlemen, just a word how these rates are put into effect. They must make up their rate, say what it is, and send it to Washington and file it there with the Interstate Commerce Commission; when they have done that it becomes a legal rate; it is open to everybody, and anybody can find out what it is. If they want to increase it they must send word

to the Commission that on a certain date we will put a new rate on. They having given the proper notice, this increased rate applies; also if they want to decrease the rate they have got to give the Commission the same notice; the purpose being so that everybody can get these rates, and everybody know what the lawful rate is, and nobody get a rate better than the rate given their competitors in any line of business.

There is one more thing that should be explained to you, for that is the theory under which this plaintiff is to claim that their arrangement was lawful; that is this, here is two lines, one the Northern Lines from Omaha down to Kansas City, and The Kansas City Southern down to Texarkana and Shreveport. Now those two roads they get together and make a rate clear from Omaha to Texarkana; that is a joint rate. If they do that it is the duty of the road getting up the joint rate to publish the joint rate at Washington with this Commission, and then it is open to the world; and that is the rate that must then apply to that class of business. In this case you will find that no such rate was ever published, as this Northern Connecting Lines should have done if they wanted to make a straight legal transaction. That was the way for them to do it. If they wanted to get The Kansas City Southern to join in a joint rate, and did get them, then if they filed it in Washington it would be a legal rate and everybody could have got it, and they could have made it what they pleased, so long as it was not unfair, but they never did that. They did get, as I stated, The Southern to agree to this request and cut the rate from Kansas City to Texarkana and

Shreveport. Now the testimony will show that although that was wrong and unlawful, yet The Southern abided by it and lived up to it for as long a time as these Northern Connecting Lines people said that that rate would be in effect. After they had got this concession this agent to the Northern Connecting Lines went back to his office and they got out a little paper called a memorandum tariff, sent it down to The Kansas City Southern and stating that this rate would expire on the 31st of October, 1901. On the 31st of October, 1901. And from the time that The Southern made this cut rate until October 31st, 1901, they did live up to it and did pay back to these people the differences between that cut rate and the lawful rate then in force. And those were rebates. That is what a rebate is; it is paying back to the shipper secretly, and under contract, the difference between the lawful rate in force and any side agreement that the company may make with him in order to get his business; just give the money back to him; of course he pays the legal rate and then they go to work and give it back to him in the way of rebates, the difference. Now after these Northern Connecting Lines had said this rate would expire, then these shipments kept coming on down from the Northern, and there was applied to them the legal rate from Kansas City to the south; the same rate that everybody had to pay. From that time on until their shipments were through there was no more of the rebate business. They kept trying to get it, making various efforts to get it, and while they were making these efforts Forrester Brothers failed, went into bankruptcy, or something, any way they failed,

and their creditors began to stir around to see what they could get out of their assets as payment on part of their debts; and this Albers Commission Company, of St. Louis, and some of the other creditors that had got track of this claim they said they had,—that Forrester Brothers said they had against The Kansas City Southern, this sum of \$10,000 or \$12,000 in rebates, and they thought they would try to force that claim against the railroad company, and that, gentlemen, is the purpose and object of this suit. We expect to demonstrate to you that that is the facts, and we expect the court to tell you that any contract or arrangement by which a shipper gets a lower rate than the published tariff rates, which I have described to you, is wholly illegal and void and can not be enforced, and is so tainted with illegality that it has no standing in any court. And in addition to that I ask you to bear in mind that these Northern Connecting Lines, as the testimony will show you, after getting this cut rate from The Kansas City Southern, sent to them a statement showing that that rate would expire on the 31st of October, 1901. And we say that during that time until the expiration fixed by him in his own circular, which they sent to us, our people did give the cut rate, though they had no business to do it and it was unlawful to do it. If you find the facts as I have stated them, and ~~we~~ think you will, we expect you to return a verdict for the defendant party, of the garnishment. We have the deposition of this Mr. Schaufler, agent for the Northern Connecting Lines, and will read it to you. He appeared at the taking of that deposition, as it shows, with his own lawyer sitting there beside of him, and when these

attorneys who questioned him began to get in close to this arrangement, the facts of it, his lawyer promptly objected and headed off the answer, and a good deal of his testimony is not true at all; so bear in mind that fact when you hear it, that he is the man that made the arrangement with The Kansas City Southern in the first instance. Now Mr. Fisher, one of the gentlemen interested with Forrester Brothers, is here. He had nothing to do personally with making or obtaining this cut rate that I told you about from The Kansas City Southern. He has Schaufler to go down and get that, so he knows nothing about what occurred there. There was no other representative of Forrester Brothers present; Mr. Catlin, the other man at St. Louis, is here also by deposition and not in person. I say that to you about Schaufler's testimony because he is the man that went and got the cut rate. And gentlemen, when you bear in mind these facts as I have tried to relate them to you, you will find there is a great and important point involved here. We say that to give a judgment to this plaintiff would be simply a travesty upon the law which has been found to be wise in order to prevent unfair dealings between railroads and shippers along their line; against the provisions which is intended to give every shipper a fair square deal, and a fair opportunity with his neighbor." (Printed record, pages 16, 17, 18 and 19.)

THE TRIAL COURT FOUND ISSUES AGAINST THE GARNISHEE.

These statements explain to some extent the questions of fact which were submitted to the trial court. The trial court did not find that this was a cut rate or preferential

rate or that the shipment of Forrester Brothers, if shipped at the contract price, would have been any more or any less than any other shipper could have shipped for between the same points and over the same lines of railroad. The court did not find that the rate agreed upon was in conflict with any established rate between the same points and over the same lines of railroad, but did find that a contract was made whereby The Kansas City Southern Railway Company agreed to haul this grain at 8 cents per one hundred pounds, and that that contract was legal and not in violation of any of the provisions of the Interstate Commerce law and that The Kansas City Southern Railway Company had charged Forrester Brothers \$10,527.55 in excess of the contract price of shipment, and that The Kansas City Southern Railway Company was indebted to Forrester Brothers in the sum just stated at the time of the commencement of this action. (Printed record, pages 284 and 286.)

MOTION TO DISCHARGE GARNISHEE.

After the statements of the case were made by the attorney for the plaintiff and also by the attorney for the garnishee and before the introduction of any evidence the following motion was made by the attorney for the garnishee:

“I desire to move to dismiss the garnishment proceedings in this case for the reason it appears from the opening statement of the plaintiff’s counsel that this is an action in which the validity of several provisions of the Interstate Act of Congress to regulate commerce is in-

volved, and that Congress having passed an act for the regulating of Interstate Commerce and provided therein the tribunals before which such questions shall be settled, and that being the Federal Court or Interstate Commerce Commission, this court is without jurisdiction over the subject matter in the action." (Printed record, p. 19.)

DEMURRER OF GARNISHEE.

At the conclusion of the evidence for the plaintiff, the garnishee filed a general demurrer to the plaintiff's testimony which, omitting the title was as follows:

"Comes now the Garnishee in the above entitled cause at the close of the plaintiff's evidence and the conclusion of their case in chief and demurred to the evidence for the reason that said evidence in its entirety does not establish any liability against this garnishee and is wholly insufficient to entitle plaintiffs to recover and it fails to show any right of action in favor of plaintiff against the garnishee.

Wherefore the garnishee asks the Court to declare it to be insufficient.

CYRUS CRANE,

and W. J. WATSON,

(Printed record, p. 108.) Attorneys for Garnishee."

**THE JUDGMENT OF THE TRIAL COURT AFFIRMED
BY SUPREME COURT OF KANSAS.**

The court found the issues in favor of the plaintiff and against the garnishee and rendered judgment against the garnishee for the sum of thirteen thousand one hundred eighty and 43-100 (\$13,180.43) dollars, which was the amount charged Forrester Brothers in excess of contract rate including interest to the date of judgment. A motion for a new trial was overruled (Printed record, pp. 288, 289), and the case was appealed to the Supreme Court of Kansas, where the judgment of the district court was affirmed. (Printed record, pp. 299 to 304 inclusive.) 79 Kan. 59, 99 Pac. Rep. 819.

Motion to Dismiss and Affirm.

After a motion for a re-hearing was filed in and overruled by the Supreme Court of Kansas this case was brought to this Court on a writ of error. (The assignments of error are found on Printed record, pp. 308 to 312 inclusive.) The C. H. Albers Commission Company aforesaid has filed a motion in this Court to dismiss the writ of error and also to affirm the judgment of the State Court, a copy of which motion is as follows:

IN THE SUPREME COURT OF
THE UNITED STATES.

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY,

Plaintiff in Error. Oct. Term 1910

vs.

No. 173.

C. H. ALBERS COMMISSION
COMPANY,

Defendant in Error.

Motion to Dismiss and Affirm.

Comes now the defendant in error by its counsel appearing in that behalf, and moves the Court to dismiss the writ of error in the above entitled cause for want of jurisdiction, because the judgment from which the said appeal purports to have been taken is the judgment of the Supreme Court of one of the United States, to-wit: The Supreme Court of the State of Kansas, and the said defendant in error by counsel as aforesaid also moves the Court to affirm the said judgment from which said appeal purports to have been taken, because, although the record in the said cause may show that this Court has jurisdiction in the premises, yet it is manifest that said appeal was taken for delay only.

JOHN M. WAYDE,
CARL O. PINGRY,
PHILIP P. CAMPBELL,

Counsel for Defendant in Error for the purposes of
these motions.

ARGUMENT AND AUTHORITIES.

Unless the plaintiff in error has brought itself within the 3rd clause of section 709 U. S. Compiled Statutes 1901, 575 it has no case before this court. In other words, unless the plaintiff in error, on account of the decision of the state court in this case, has been deprived of some right, title, privilege or immunity which it is entitled to under the Act of February 4, 1887, commonly known as the Interstate Commerce Act, and amendments thereto, this court will not take jurisdiction of the case, and the motion of the defendant in error to dismiss the writ of error for want of jurisdiction should be sustained. It is not claimed on the part of the plaintiff in error in its assignments of error that it has been deprived of any right, title, privilege or immunity in any other way except under the above Act or Acts of Congress. It should also be observed that in the assignments of error, even in this court, that the attention of the court is not directed to the particular section or sections of the Act by which the plaintiff in error claims that it has been deprived of some right, title, privilege or immunity. Neither is it stated whether it relies upon the original act or some amendment thereto or upon what particular amendment of the Interstate Commerce Law it does rely. The controversy out of which this law suit began occurred in the Fall of 1901 and in the Spring of 1902. A number of amendments have been made to the Interstate Commerce Act. One amendment was made to the Act on March 2, 1889, (25 Statute at large, 855) another on February 10, 1891, (26 Statute at large, 743) another on February 8, 1895, (28 Statute at large, 645) another June

29, 1906, (34 Statute at large, 584) another on June 30, 1906, (34 Statute at large, 838) another on April 13, 1908, (35 Statute at large, p.....,) another February 25, 1909, (35 Statute at large, 648;) another June 18, 1910, (36 Statute at large, p.....) The Elkins Act was passed on February 19, 1903, which was entitled "An Act to further regulate commerce with foreign nations and among the States."

From the assignments of error which are made by the plaintiff in error in this court (Printed record, pages 308 to 312, inclusive) it is difficult to tell whether the plaintiff in error bases its claim upon the original Act or upon the original Act and all of the amendments thereto or whether it bases its claim upon some particular amendment to the act or whether the amendment relied upon was made before or since the controversy in this case arose. If the plaintiff in error has been deprived of any right or title, privilege or immunity under the Act, or some amendment thereto, in its assignments of error, it should have called the attention of the court to the particular provision of the act upon which it relied. This case was tried in the trial court in 1906 and decided in 1907. (Printed record, pp. 282, 283, 289) and in the Supreme Court of Kansas in 1909. (Printed record, p. 305.) Neither in the trial court nor in the Supreme Court of Kansas did the plaintiff in error specially plead or claim any right, title, privilege or immunity under any special section or sections of any of the Act or Acts of Congress regarding interstate commerce or otherwise. It will thus be seen that the attention of the trial court or of the Supreme Court was never more closely called to the

particular statute relied upon than under the general term "Interstate Commerce Act"; not even directing the court's attention to "the Act of 1887" or to any amendment thereto. The Federal Statute Number 709, *supra*, provides that the right, privilege or immunity must be "specially set up or claimed." The Interstate Commerce Act or Acts with their various amendments cover a wide range of subjects. These acts require many things to be done on the part of the carriers and prohibit the carriers from doing certain other things. It would seem that making a claim in such general terms as "The Interstate Commerce Act" without calling the attention of the court to the particular sections or provisions of the statute relied upon is too general to give this court jurisdiction to review the case.

It has been held by this court in the case of Kipley vs. Illinois 170 U. S. 182, 42 L. ed. 998, 18 Sup. Ct. Rep. 550, that an allegation in a pleading that a state statute is unconstitutional and void is too general to give the Supreme Court of the United States jurisdiction to review a state decision upholding the validity of the statute. It has been held that the attention of the state court should be directed to the particular section of the federal constitution or to the federal statute on which reliance is placed, and to the right claimed under it. Maxwell vs. Newbold 18 How. 511, 15 L. ed. 506; Hoyt vs. Sheldon, 1 Black 518, 17 L. ed. 65; Farney vs. Towle, 1 Black, 350, 17 L. ed. 216; Capital City Dairy Co. vs Ohio, 183 U. S. 238, 43 L. ed. 170, 22 Sup. Ct. Rep. 120.

It is well settled in this court that when any right, title, privilege or immunity is claimed under a federal

statute on a writ of error to a state court that that right, title, privilege or immunity must be "specially set up and claimed" in the state court in the proper time and in the proper way. Where the case arises under the 3d clause of the jurisdictional statute, the right, title, privilege, or immunity must be specially set up or claimed. *Chicago & N. W. R. Co. vs. Chicago*, 164 U. S. 454, 41 L. ed. 511, 17 Sup. Ct. Rep. 129; *Schuyler Nat. Bank vs. Bullong*, 150 U. S. 85, 37 L. ed. 1008, 13 Sup. Ct. Rep. 24; *Manning vs. French*, 133 U. S. 186, 33 L. ed. 582, 10 Sup. Ct. Rep. 258.

That the Supreme Court, in an action of law at least, has no jurisdiction to review the decision of the highest court of the state on a pure question of fact although a federal question would or would not be presented according to the way in which the question of fact was decided is clearly settled. *Lewis vs. Canpan*, 3 Wall. (U. S. 106); *Paul vs. Jordan*, 15 Wall. (U. S. 393); *Bogg vs. Merced Mining Co.*, 3 Wall. (U. S. 304); *Crary vs. Devlin*, (23 U. S.) L. ed. 511; *Republican River Bridge Co. vs. Kansas Pacific Ry. Co.* 92 U. S. 315; *Dower vs. Richards*, 151 U. S. 658, 38 L. ed. 305.

That all questions of fact are settled by the decision of the state court is no longer open to dispute in this court. *Hedrick vs. Atchison, etc.*, R. Co. 167 U. S. 673; *Atchison etc. R. Co. vs. Matthews*, 174 U. S. 96; *Bachus vs. Fourth St. Union Depot Co.* 169 U. S. 557; *Egan vs. Hart*, 165 U. S. 188; *In re Buchanan* 158 U. S. 31; *Lewis vs. Campan* 3 Wall 106; *Hall vs. Jordan* 15 Wall. 393; *Boggs vs. Merced Mining Co.* 3 Wall. 304; *Carpenter vs. Williams* 9 Wall. 785; *Republic River Bridge Co. vs. Kansas P. R.*

Co. 92 U. S. 315; Martin vs. Marks 97 U. S. 345; Kenney vs. Effinger 115 U. S. 577; Quinby vs. Boyd; 128 U. S. 488; Dower vs. Richards, 151 U. S. 658.

The contract of the railway company was made in the Fall of 1901 and the shipments were made in the Fall of 1901 and the Spring of 1902. Printed record, p. 456.) A citation of authorities upon the proposition that the rights of the parties are to be determined under the law as it existed at the time that the contract and shipments were made is unnecessary. This action was commenced in the Spring of 1902 (Printed record, pp. 4 to 7.) In the petition in error in this court the plaintiff in error makes seven assignments of error, (Printed record, pp. 308 to 312 inclusive.) reduced to their last analysis, however, they are all embraced under the one general proposition, i. e., was the plaintiff in error by reason of the decision of the state court under the facts as they were found by the state court, deprived of some right, title, privilege or immunity under the Interstate Commerce Act or the amendments thereto, to which it was entitled? For convenience, however, these assignments of error might be grouped under the two general propositions.

First: Did the state court have jurisdiction of the matter in controversy, or was it deprived of that jurisdiction by reason of the Interstate Commerce Law?

Second: If the state court had jurisdiction of the matter in controversy was the judgment of the state court or decision of the state court in conflict with the provisions of the Interstate Commerce Law?

The trial trial court simply found the issues in favor of the plaintiff and against the garnishee and that at the date of the service of summons in garnishment upon the garnishee (plaintiff in error) the Kansas City Southern Railway Company was indebted to the firm of Forrester Brothers in the sum of \$10,527.55; that Forrester Brothers were entitled to interest on this sum at the rate of six per cent. per annum from April 7, 1902, until the date of judgment against the garnishee; that the amount due from Forrester Brothers to the plaintiff, the C. H. Albers Commission Company, including interest from January 7, 1907 was \$13,180.43, and that the judgment against The Kansas City Southern Railway Company should bear interest from its date at the rate of 6 per cent. per annum (Printed record, p. 284 and 285.) The trial court also found the contract between the Northern Connecting Lines and The Kansas City Southern Railway Company whereby it agreed to accept eight cents per hundred pounds as its proportion of the through rate on corn and oats from Omaha, Nebraska to Texarkana, Texas and Shreveport, Louisiana, was a good and valid contract between the Railway Company and Forrester Brothers; that the Forrester Brothers were entitled to have their grain hauled from Kansas City, Missouri, over The Kansas City Southern railroad to Texarkana, Texas, and Shreveport, Louisiana at the rate of 8 cents per hundred pounds; that The Kansas City Southern Railway Company charged \$10,527.55 in excess of the lawful rate and are indebted to Forrester Brothers in the sum of \$10,527.55 with interest from the 7th day of March, 1902. (Printed record, p. 286.)

The Supreme Court of Kansas decided that, in as much as the trial court had not made special findings of fact, that under the Kansas Practice the Supreme Court was compelled to assume that the trial court found all facts necessary to support the judgment rendered, to be established by evidence, if there was any testimony in the record tending to sustain such facts. *Mushrush vs. Zarker et al.* 48 Kan. 382; *Blanchard vs. Jackson* 55 Kan. 247; *Thompson vs. Pfeifer*, 60 Kan. 409; *Taylor vs. Herron*, 77 Kan. 652.

The Supreme Court then decided that if this were an action to recover rebates or brought to recover a sum less than the lawfully established rate, that the action could not be maintained. (Printed record, Pages 299 and 300.) In other words the state court found that if this were an action to recover rebates or to recover the differences between an established rate and a lesser rate over the same route that the plaintiff would not be entitled to recover. This was not depriving The Kansas City Southern Railway of any right, title or privilege which the Interstate Commerce Law gave it. The court simply decided that the Railway Company had not established facts sufficient to entitle it to the benefit of the law in this case. In other words, the state court simply held that the railway company had failed to prove its defense. The state court found that there was no proof offered of the making, or of the filing with the Interstate Commerce Commission or of the publishing of the local rates on The Kansas City Southern Railway to Texarkana and Shreveport or on the Northern Connecting Lines. In

other words the Railroad Company offered no evidence of the making, filing or publishing of its local rates or of the local rates on either road over which the grain was shipped.

The court found that the contract was made as claimed by the plaintiff below; that the contract was presumed to be legal and that it devolved on the Railroad Company to establish the illegality, which the Railroad Company failed to do. The court nowhere held in its opinion (Printed record, pp. 293 to 306 inclusive) that the Railway Company was not entitled to all of the rights and privileges which the Interstate Commerce Law gave it, but simply held that it failed to establish sufficient facts by the evidence to bring it within the law and to relieve it from the obligations of its contract. This is not depriving the Railway Company of any right, title or privilege under the law. *Crary vs. Devlin* 154 U. S. 619, 14 Sup. Ct. Rep. 1199; *Bartlett vs. Lockwood* 160 U. S. 357, 16 Sup. Ct. Rep. 334, 40 L. ed 455; *Merced Mining Co. vs. Boggs* 3 Wall, 304 (U. S.) 18 L. ed. 245; *Quinby vs. Boyd* 128 U. S. 488, 9 Sup. Ct. Rep. 147, 32 L. ed. 405; *Telluride Power Transmission Co. vs. Grand Western Railway Co.* 175 U. S. 639, 20 Sup. Ct. Rep. 245, 44 L. ed. 305; *Martin vs. Marks* 97 U. S. 345, 24 L. ed. 940; *Dower vs. Richards* 150 U. S. 671, 38 L. ed. 311, 14 Sup. Ct. Rep. 452; *France vs. Missouri* 154 U. S. 667, 14, Sup. Ct. Rep. 1191, 26 L. ed. 86; *Kenney vs. Efinger* 115 U. S. 577, 6 Sup. Ct. Rep. 185, 29 L. ed. 498.

Briefly stated, the state court found that the Northern Connecting Lines, three railroad companies having lines of railroad from Omaha, Nebraska and Council Bluffs,

Iowa, and common points, running to Kansas City, Missouri, made a contract with The Kansas City Southern Railway Company to take eight cents per hundred pounds as its proportion of the joint through rate; that these roads had not, prior to the making of this joint through rate made a joint through rate over these lines and that at the time of the making of this joint through rate there was no other joint through rate in force over these lines and no schedule of a joint through rate over these lines had ever been filed with the Interstate Commerce Commission and published; that there was no legally established local rates on the roads making this joint through rate in conflict with the joint through rate; that the Kansas City Southern had established a joint through rate with some other lines of railroad, but that the Northern Connecting Lines were not parties to it, and so far as the record shows the lines with whom the Kansas City Southern had established a joint through rate were not competing lines with the Northern Connecting Lines and did not reach Omaha and Council Bluffs and common points.

The state court found that Forrester Brothers relied upon the sixteen and one-half cents per hundred pounds as quoted to them by the Northern Connecting Lines to Kansas City and from Kansas City over the Kansas City Southern to Texarkana and common points; that the grain so shipped by Forrester Brothers was through billed, but that the haul was broken at Kansas City by the Kansas City Southern and new bills of lading issued; that The Kansas City Southern charged and collected from Forrester Brothers more than eight cents per hundred pounds.

its proportion of the joint through rate, and that the total amount of the overcharge including interest amounted to \$13,180.43. (Printed record, pp. 293 to 306.)

The record shows that the C. H. Albers Commission Company, the defendant in error, sued Forrester Brothers and garnisheed The Kansas City Southern Railway Company; that the C. H. Albers Commission Company elected to take issue on the answer of The Kansas City Southern, the garnishee, denying liability to Forrester Brothers. According to the Kansas practice this would have the same effect as substituting the C. H. Albers Commission Company for Forrester Brothers in action by Forrester Brothers against The Kansas City Southern to recover overcharges.

The Kansas garnishment laws applicable to this case are already quoted in this brief.

THE STATE COURT HAS JURISDICTION OF THIS ACTION.

In discussing this proposition we shall sub-divide it into three parts and discuss each separately.

First: Under the common law, state courts have jurisdiction of actions of the kind at bar.

Second: Unless the jurisdiction of the state courts is abrogated by the Interstate Commerce Act, state courts have jurisdiction of actions of this kind.

Third: This action is independent of the Interstate Commerce Act and is not an action to recover damages by reason of the violation of any of the provisions of that act.

STATE COURTS HAVE JURISDICTION AT COMMON LAW.

The state court found that The Kansas City Southern Railway Company charged and collected from Forrester Brothers for transportation over \$10,000.00 more than the Railway Company was entitled to receive in accordance with the terms of a certain contract for transportation of grain and of a certain joint through rate made with the Northern Connecting Lines and that the excess was not paid voluntarily. This is an action to recover those excess charges and interest on the same. It cannot be seriously contended that the state courts do not have jurisdiction at common law to hear and determine actions of this kind. This is not an action to in any way regulate commerce among the states. This is simply an action to recover on a contract. Courts have taken jurisdiction of actions of this kind since railroads have been in existence and the common law right of a state court to hear and determine actions of this kind has never been questioned. *Texas & P. R. Co. vs. Abilene Cotton Oil Co.*, 27 Sup. Ct. Rep 353; *West Virginia Transportation Co. vs. Sweetzer*, 25 W. Va. 434; *Peters vs. Railroad Co.*, 42, Ohio 275, 51 American Reports 814 and cases cited in note; *Railroad Co. vs Lockwood*, 17 Wall. 379; *McGregor vs. Erie Railway Co.*, 35 N. J. Law, 89, 113.

**JURISDICTION OF STATE COURTS HAS NOT BEEN
ABROGATED BY INTERSTATE
COMMERCE ACT.**

It is provided in Section 22, of the Interstate Commerce Act, "and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies."

Unless the jurisdiction of the state courts has been abrogated by the Interstate Commerce Act, they still have jurisdiction of cases of this kind. Counsel for plaintiff in error have not pointed out what section or sections of the Interstate Commerce Act they claimed deprives the state courts of jurisdiction. Section 9, of the Act provides "that any person or persons claiming to be damaged by any common carrier subject to the provisions of this Act, may either make complaint to the Commission as hereinafter provided for or may bring suit in his or their own behalf for the recovery of damages for which such common carrier may be liable under the provisions of this Act, in any District or Circuit Court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of the said remedies and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt."

It should be observed that this statute provides only for the recovery of such damages as such common carrier shall be "liable for under the provisions of this Act." In

other words, as we construe the Act there are certain liabilities on the part of carriers which are created by the Act and which did not exist independent of the Act, or in other words, there were certain liabilities created which did not exist at common law or by statute outside of the Interstate Commerce Act itself.

Courts will construe statutes so as to give force and effect to every part of the different statutes, if possible, and so as to harmonize the different provisions of the same statute and to carry out the intent of the legislative body. *Kohlsatt vs. Murphy*, 96 U. S. 153, 24 L. ed. 844; *Neal vs. Scruggs*, 95 U. S. 704, 24 L. ed. 586; *Berneir vs. Berneir*, 147 U. S. 242, 13 Sup. Ct. Rep. 244, 37 L. ed 151; *Atkins vs. Fiber Disintegrating Company*, 18 Wall 272, 21 L. ed. 841.

When we construe the language above quoted in Section 9, of the Act, with that part of Section 22, of the Act which provides "and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies," it would seem that Congress never intended to abrogate or even abridge or lessen any of the rights or remedies existing at common law or by statute except so far as the Act itself makes the common law right or the Common Law remedy so inconsistent with the Act that the one is so repugnant to the other that both cannot stand. In that event the statute, of course, would prevail. However, the Act itself does not provide that even all actions for damages arising by reason of a violation of the Act must be

brought before the Commission or in the Federal courts but the Act says "may" be brought before the Interstate Commerce Commission or in the United States District or Circuit Courts of the proper district. The Act nowhere provides that even as to all rights of action or causes of action which shall originate wholly and solely by reason of the violation of the Act that they "must" be brought before the Commission or in the Federal Courts. It would seem from a proper construction of the Act that Congress did not use the word "may" inadvisedly and with the intention of having it mean "must". If it had so intended the word "must" would have been used in the Act itself instead of the word "may". Congress evidently thought that there might be rights of action or damages arising by reason of the violation of the Act which could be determined and recovered in the state courts and for that reason the Act provides "nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies." If this were not the purpose of the Act why should the clause just quoted be inserted in the Act? Undoubtedly, under the provisions of the Act, many liabilities arise against carriers, such as fixing the reasonableness of a rate or which in their nature are of such a character that state courts do not have jurisdiction; but we do not concede even as to all liabilities arising by reason of the violation of the Act that the state courts are wholly deprived of jurisdiction under the Act, as an illustration—suppose that A. should be compelled to pay and did pay to a certain railroad company as passenger fare one hund-

red dollars to ride from Kansas City to Chicago when at the same time the regularly published and established fare between these points was ten dollars. In other words, suppose, either through the negligence or incompetency of the employees of the road, or through their fraud and extortion, A. was compelled to pay and did pay ninety dollars more than the regular fare, or to put the proposition in another form, suppose A. had bought a ticket at the regular price that all passengers paid between these two points and the conductor refused to take the ticket and charged A. ninety dollars more than the regular fare for carrying him between these two points, this no doubt would be a violation of the Act because it would be charging one person more than they would be charging another person under substantially similar circumstances, but could it be claimed that A. could not bring an action in the state courts and recover the difference between the contract price, which was the regularly established rate, and the amount that he was compelled to pay in addition to the regular rate? Was it the intention of Congress when it used the word "may" and when it provided that all remedies existing by statute and at common law were in addition to the remedies provided in the Act—that after its passage all other remedies should be taken away except those provided in the Act or was it the intention of Congress in view of the language just quoted, that all misunderstandings between shippers and carriers in regard to their contracts in the many transactions that occur daily between shippers and carriers should be litigated only in the Federal Courts? If it were shown that a certain contract was prohibited by the Act

this might prevent a recovery in the state courts, not because the court did not have jurisdiction of the matter but because the contract is void for the reason that it violated the Act. As a general proposition contracts made in violation of law, or which are prohibited rather by law, can rarely, if ever be enforced and this is not confined to the Interstate Commerce Law.

If Congress did not recognize the fact that there were certain remedies existing at common law on matters embraced within the Interstate Commerce Act and desired to continue those remedies, what was the purpose of saying that the remedies provided in the Act were in addition to the common law remedies? If the Federal Courts have exclusive jurisdiction on all matters involving a violation of the provisions of the Interstate Commerce Act, then the remedies provided therein are not in addition to common law remedies existing at the time of the passage of that Act, but are substituted for them.

We have been unable to find a single case either State or Federal in which the facts were similar to the one at bar or in which the same propositions were involved that the courts held that the jurisdiction of the state courts was abrogated by reason of the Interstate Commerce Act.

There have been several cases decided in which the reasonableness of an interstate rate was in issue in which the courts have held that the Federal Courts have exclusive jurisdiction.

We cannot find any section of the Interstate Commerce Act, that the pre-existing remedy at common law in actions of the kind at bar, would be repugnant to, or taking the Act as a whole we are unable to see that the efficacy of the Act would even in a small degree be impaired by state courts retaining jurisdiction in cases of this kind; or in retaining jurisdiction to pass upon the rights of the parties under all contracts between shippers and carriers. In other words, the Act nowhere provides that the Interstate Commerce Commission or the United States District or Circuit Courts shall have jurisdiction to enforce the contract where either the shipper or the carrier has violated the contract or to recover damages by reason of the violation of the contract where the contract is the basis of the action.

As repeals by implication are not favored and as common law remedies are expressly reserved by the act itself, and as the remedy which the defendant in error seeks to invoke is one which is not repugnant to the statute and does not in any way deprive the statute of its efficacy it logically follows that the Kansas Courts did have jurisdiction of this action, even though it may have arisen by reason of the violation of some of the provisions of the Interstate Commerce Act.

In the case of *Texas and P. R. Co. vs. Abilene Cotton Oil Co.*, 27 Sup. Ct. Rep. 353, Mr. Justice White in delivering the opinion of the court says:

"As the right to recover, which the court below sustained, was clearly within the principles just stated, and as it is conceded that the act to regulate commerce did not, in so many words, abrogate such right, it follows that the

contention that the right was taken away by the act to regulate commerce rests upon the proposition that such results was accomplished by implication. In testing the correctness of this proposition we concede that we must be guided by the principle that repeals by implication are not favored, and, indeed, that a statute will not be construed as taking away a common law right existing at the date of its enactment, unless that result is imperatively required; that is to say, unless it be found that the pre-existing right is so repugnant to the statute that the survival of such right would in effect deprive the subsequent statute of its efficacy; in other words, render its provisions nugatory."

The Abilene Cotton Oil Co. case was a case brought in the state courts of Texas and the point at issue was the reasonableness of a regularly established, filed and published interstate rate. The court held that the state court did not have jurisdiction; that the Interstate Commerce Commission was the forum to primarily decide the reasonableness of fixed rates. In commenting upon Section 22 of the Interstate Commerce Act, the court says: "This clause, however, cannot in reason be construed as continuing in shippers a common law right, the continued existence of which would be absolutely inconsistent with the provisions of the Act. In other words, the act cannot be held to destroy itself. The clause is concerned alone with the rights recognized in or duties imposed by the Act, and the manifest purpose of the provision in question was to make plain the intention that any specified remedy given by the Act should be regarded as cumulative, when other appropriate

common law or statutory remedies existed for the redress of the particular grievance or wrong dealt with in the Act."

We contend, and we believe our contention is supported by the case cited and quoted from above, that unless a common law action is inconsistent with the Interstate Commerce Act, it can be maintained in a state court regardless of the fact that the Interstate Commerce Act embraces some of the subjects in litigations. We claim that the jurisdiction at common law of state courts on matters of Interstate Commerce is not abrogated by reason of the fact that the violation of some of the provisions of the Interstate Commerce Act are drawn in question, unless it is on a matter that to allow the state courts to retain jurisdiction would destroy the purpose of the Act.

The Interstate Commerce Act supports our contentions because it says in that Act that the provisions of the Act are in addition to the remedies at common law.

**THIS ACTION IS INDEPENDENT OF THE INTER-
STATE COMMERCE ACT AND IS NOT AN ACTION
TO RECOVER DAMAGES BY REASON OF
THE VIOLATION OF ANY OF THE PRO-
VISIONS OF THAT ACT.**

In the case of *Parsons vs. Chicago & N. W. R. Co.*, 167 U. S. 447, 455, 42 L. ed. 231, 234, this court decided that the Interstate Commerce Act, is a penal statute and that actions for damages arising by reason of the violation of the provisions of the Act are penal in their nature and exist only by reason of the Act.

In *Ratican vs. Terminal R. Ass'n* 114 Federal 671 Adams, District Judge, says: "The plaintiff, in direct terms bases his right of recovery on the Interstate Commerce Act (Section 2) which declares discrimination between shippers for service in the transportation of like kind of traffic under substantially similar circumstances and conditions to be an unlawful act, and declares that any carrier indulging in any such discrimination shall be deemed guilty of unjust discrimination. Section 8 of the Interstate Commerce Act makes any such common carrier liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of the Act, together with a reasonable counsel or attorney's fee to be fixed by the court in every case of recovery. Sec. 10 of same Act subjects any common carrier and also the officers, agents and directors of any such common carrier, to a fine not exceeding \$5000.00 for each offense. According it may be stated that the statute is a highly penal statute, conferring certain rights upon the party aggrieved, recoverable by him in a civil action, and also subjecting the party offending to its pains and penalties. The Supreme Court of the United States in *Parsons vs. Railroad Co.*, 167 U. S. 447, 17 Sup. Ct. Rep. 887, 42 L. ed. 23, has finally and conclusively settled the question. That case was one wherein the plaintiff sought to recover damages against the railroad under the Interstate Commerce Act. The Supreme Court disposed of that case by holding that the Interstate Commerce Act was a penal statute and that the action of the plaintiff thereon was to recover money in the nature of a penalty. See, also, to the same general effect, the case of *Revelle vs. Railway Co.*, "*supra*."

The action at bar is not an action to recover damages against the plaintiff in error because of a violation of the provisions of the Interstate Commerce Act. It is an action outside of and independent of the Interstate Commerce Act. It is not such an action as would subject the plaintiff in error to any penalty. The defendant in error does not seek to recover damages by reason of any fact which would have subjected the plaintiff in error to a criminal prosecution. This is not an action for damages by reason of unreasonableness of rates, unjust discrimination, undue preference or of anything required or forbidden to be done by the Interstate Commerce Act. It is simply an action to recover money had and received more than was provided in a contract of shipment. It is not an action to recover rebates, or to enforce a contract for rates less than the published rates. According to the facts found by the state courts, the railroads over which the grain was shipped had never made a joint through rate prior to the making of the one in question, and the question of damages by reason of charging more than the schedule rate filed with the Interstate Commerce Commission could not have entered into this case, because no schedule had been filed. The only violation of the Interstate Commerce Act of which plaintiff in error was guilty was in not filing the joint through rate, which was made, with the Interstate Commerce Commission and publishing it as required by the Commission. The defendant in error did not seek to recover by reason of this failure on the part of the plaintiff in error to file and publish its rates and consequently could not exact any penalty from plaintiff in error for this reason. It

follows that if the defendant in error did not seek to recover by reason of the violation of any of the provisions of the Interstate Commerce Act, or base its right of recovery on such violation, that this case would not be such a case as is contemplated by Sections 8 and 9 of the Interstate Commerce Act and state courts would have jurisdiction even though the Federal Courts have exclusive jurisdiction of cases involving a violation of the provisions of the Interstate Commerce Act.

The statute does not say that the Federal Courts shall be the forum when the liability arises independent of the Interstate Commerce Act. Under substantially similar circumstances as the case at bar the state courts have retained jurisdiction in the following cases: *Mo. P. R. Co. vs. Relf*, 78 Kan. 463; *Wabash R. R. Co. vs. Sloop* (Mo.) 98 S. W. 607; *Southern Kansas R. Co. vs. Burgess* (Texas) 90 S. W. 189; *Gulf R. R. Co. vs. Leatherwood* (Texas) 69 S. W. 119; *Ry. Co. vs. Horne* (Tenn.) 59 S. W. 134.

**On the Facts Found by the State Court the Judgment
Rendered was Not Inconsistent With the Interstate
Commerce Law.**

Aside from the question as to whether or not the state court had jurisdiction of this case, the only other question involved before this court, as we view the record, is this, was it lawful for the Kansas City Southern Railway Company to enter into a contract with the Northern Connecting Lines and accept as its proportion of the through haul from Omaha and Council Bluffs to Texarkana and Shreveport

8 cents per hundred pounds, and to make a contract with Forrester Brothers to ship this lot of grain at that rate when at the same time it had a proportional rate with the Great Western and a number of other railroads (in which the Northern Connecting Lines were not included) under which proportional rate it received more than 8 cents per hundred pounds for its part of the haul between Kansas City and Texarkana and Shreveport? The court found that the proportional rate between the Great Western and certain other railroads did not include the roads over which this grain was shipped to Kansas City in its traffic schedules, and that the evidence did not show the filing with the Interstate Commerce Commission and the publication, as required by law, of either the local rates between Omaha and Council Bluffs and Kansas City on the Northern Connecting Lines or of the local rates on the Kansas City Southern Railway between Kansas City and Texarkana and Shreveport, but that the rate charged Forrester Brothers in the aggregate was the sum of the two local rates between these points, although the Kansas City Southern Railway's proportion of the total rate at 8 cents per hundred pounds was less than its proportion of the through rate with the Great Western Railway Company and certain other railroads.

In discussing this question we shall confine ourselves to the facts as they are found by the state court. It should also be observed that no question was raised as to the reasonableness or unreasonableness of the joint rate agreed upon and established between the Northern Connecting Lines and the Kansas City Southern Railway Company, and that no question was raised as to the reasonableness or unreasonableness of 8 cents per hundred

pounds as the Kansas City Southern Railway's proportion of this through haul. It should also be observed that the contract rate of Forrester Brothers was not in conflict with an other rate over these roads and between the same *termini*.

All that can possibly be claimed on the part of the plaintiff in error is that it had a different proportional rate between certain other railroad companies at the time that this grain was shipped to what it had under its joint traffic arrangement with the Northern Connecting Lines, and to its rate specified in its contract with Forrester Brothers.

The court found that the rate was made between the officers of the two roads whose duty it was to fix the rate, and that Forrester Brothers made their contract in accordance with the rate thus fixed. It should also be observed that the trial court did not find that any other shipper who shipped the same kind of grain from Omaha and Council Bluffs to Texarkana and Shreveport over these roads during the time that the shipments of Forrester Brothers were made, paid any more or less for the through haul than Forrester Brothers contracted to pay. It should also be observed that the amount of the judgment was simply the amount of excess charges made by the Kansas City Southern Railway Company, together with interest on the same up to the time of judgment over and above its proportion of the joint through rate with the Northern Connecting Lines, and over and above the rate which it gave to Forrester Brothers on this certain lot of grain. It should also be observed that when the change of rates was made

by the Kansas City Southern Railway Company in its proportional rates with the Great Western and certain other roads that the Northern Connecting Lines, the lines over which this grain was shipped to Kansas City, were not included in the traffic schedules by the Kansas City Southern Railway Company. Hence the following propositions are to be deduced from the facts as just stated and as found by the court:

First: When a railroad company has a proportional rate with A. railroad companies whereby it receives a certain rate per hundred pounds for hauling a certain kind of freight over its road, can it establish a rate with B. railway companies which are not included in the A. proportional rates, whereby it is to receive as its proportion of the through haul a different rate to what it receives in its traffic agreement with A. roads? In other words can a railway company accept a certain rate per hundred pounds as its proportion of a through haul from one railway company and a different rate per hundred pounds as its proportion of a through haul from another railway company?

Second: Can a railroad company relieve itself from the obligations of its contract by failing to comply with the Interstate Commerce Law with reference to filing and publishing its rates, and is the contract illegal when made with the shipper when it is not shown that the contract rate is in violation of any through rate established by the railroads or is not in conflict with any published rate of the railroads over which the grain is shipped and which is applicable to the shipment?

In this connection we call the attention of the court to the case of the Little Rock & Memphis Ry. Co. vs. St. Louis & Southwestern Ry. Co. et al, 63 Fed. Rep. 775. 26 L. R. A. 195, in which Judge Thayer of the Eighth Circuit made an exhaustive study of these questions and in an able opinion said in part:

"Before discussing the precise issue, which arises upon this record, it will be well to re-state one or two propositions that are supported by high authority as well as persuasive reasons, and which do not seem to be seriously controverted even by the complainant's counsel. In the first place, the Interstate Commerce Law does not require an interstate carrier to treat all other connecting carriers in precisely the same manner, without reference to its own interests. . . . Some play is given by the act to self-interest. The inhibitions of the third section of the law, against giving preferences or advantages, are aimed at those which are 'undue or unreasonable;' and even that clause which requires carriers 'to afford all reasonable, proper, and equal facilities for the interchange of traffic' does not require that such 'equal facilities' shall be afforded under dissimilar circumstances and conditions. Moreover, the direction 'to afford equal facilities for an interchange of traffic' is controlled and limited by the proviso that this clause 'shall not be construed as requiring a carrier to give the use of its tracks or terminal facilities to another carrier.' Kentucky & I. Bridge Co. vs. Louisville & N. R. Co., 37 Fed. Rep. 571; 2 L. R. A. 289; 9 Inters. Com. Rep. 351; Oregon Short Line & U. N. R. Co. vs. Northern Pac. R. Co., *supra*.



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"In the second place it has been held that neither by the common law nor by the Interstate Commerce Law have the National Courts been vested with jurisdiction to compel interstate carriers to enter into arrangements or agreements with each other for the through billing of freight, and for joint through rates. Agreements of this nature, it is said under existing laws, depend upon the voluntary action of the parties, and cannot be enforced by judicial proceedings without additional legislation. *Little Rock & M. R. Co. vs. East Tennessee, V. & G. R. Co.*, 4 Inters. Com. Rep. 261; 47 Fed. Rep. 771; *Little Rock & M. R. Co. vs. St. Louis, I. M. & S. R. Co.*; 41 Fed. Rep. 539; 2 Inters. Com. Rep. 763; and cases there cited by Judge Caldwell. Furthermore, it has been ruled by Mr. Justice Field in the case of the *Oregon Short Line & U. N. R. Co. vs. Northern Pac. R. Co.*; 51 Fed. Rep. 465, 474; 4 Inters. Com. Rep. 249, that the third section of the Interstate Commerce Act does not require an interstate carrier to receive freight in the cars in which it is tendered by a connecting carrier, and to transport it in such cars, paying a mileage rate thereon, when it has cars of its own that are available for the service and the freight will not be injured by transfer. It should be remarked in this connection that the bills on file in the present cases, as well as the petitions in the law cases, fail to disclose whether the offending companies have refused to receive freight in the cars in which it was tendered to them, even when it would injure the freight to transfer it, or when they had no cars of their own that were immediately available to forward it to its destination. Neither do the bills or the petition disclose, whether in

tendering freight in cars to be forwarded, the complainant company demanded the payment of the usual wheelage on the cars, or tendered the use of the same free, for the purpose of forwarding the freight to its destination. The allegations or a refusal to receive freight in cars are exceedingly general, and convey no information on either of the points last mentioned.

"As we have before remarked, the several propositions above stated do not seem to be seriously questioned. It is urged, however, in substance, that although the court may be powerless to make and enforce agreements between carriers for through billing and through rating, and for the use of each other's cars, tracks and terminal facilities, yet that when a carrier, of its own volition, enters into an agreement of that nature with another connecting carrier, the law commands it to extend 'equal facilities' to all other connecting carriers, if the physical connection is made at or about the same place, and the physical facilities for an interchange of traffic are the same, and that this latter duty the courts may and should enforce. It will be observed that the proposition contended for, if sound, will enable the courts to do indirectly what it is conceded they cannot do directly. It authorizes them to put in force between two carriers an arrangement for an interchange of traffic that may be of great financial importance to both, which could neither be established nor enforced by judicial decree, except for the fact that one of the parties had previously seen fit to make a similar arrangement with some other connecting carrier. It may be, also that the arrangement thus forced upon the carrier would be one in which the public

at large have no particular concern, because the equal facilities demanded by the complainant carrier would be of no material advantage to the general public, and would only be a benefit to the complainant.

“Another necessary result of the doctrine contended for is that it deprives railway carriers, in a great measure, of the management and control of their own property, by destroying their right to determine for themselves—what contracts and traffic arrangements with connecting carriers are desirable and what are undesirable. There ought to be a clear authority found in the statute depriving a carrier of this important right before the authority is exercised, for when questions of that nature have to be solved, a great variety of complex considerations will present themselves, some of which can neither be foreseen nor stated. A railroad having equal facilities at a given point for forming a physical connection with a number of connecting carriers might find it exceedingly beneficial to enter into an arrangement with one of them, having a long line and important connections, for through billing and rating, and for the use of each other's cars and terminal facilities, while it would find it exceedingly undesirable, and unprofitable to enter into a similar arrangement with a shorter road, which could offer nothing in return. Or the case might be exactly the reverse. The shorter, and at the time the less important road, might be able to present sound business reasons which would make an arrangement with it, of the kind above indicated, more desirable than with the longer line.

Furthermore, if it be the law that an arrangement for through billing and rating with one carrier necessitates a

like arrangement with others, this might be a controlling influence in determining a railway company to refuse to enter into such an agreement with any connecting carrier.

In view of these considerations we are unable to adopt a construction of the Interstate Commerce Act which will practically compel the carrier when it enters into an arrangement with one carrier, for through billing and rating and for the use of its tracks and terminals to make the same arrangement with all other connecting carriers, if the physical facilities for an interchange of traffic are the same, and to do this without reference to the question whether the enforced arrangement is or is not of any material advantage to the public.

In two of the cases heretofore cited (*Kentucky & I. Bridge Co. vs. Louisville & N. R. Co.*, and *Oregon Short Line & U. N. R. Co., vs. Northern Pacific R. Co.*) it was held that the charge of undue or unreasonable discrimination cannot be predicated on the fact that a railroad company allows one connecting carrier to make a certain use of its tracks or terminals, which it does not concede to another. This conclusion was reached as the necessary result of the final clause of the third section of the Interstate Commerce Law, above quoted, to the effect that the second paragraph of the third section shall not be so construed as to require a carrier to give the use of its tracks or terminals to another company. Railroads are thus left by the Commerce Act to exercise practically as full control over their tracks and terminals with reference to other carriers as they exercised at common law. The language of Mr. Justice Field in that behalf was as follows:

'That a common carrier is left free to enter into arrangements for the use of its tracks or terminal facilities, with one or more connecting lines, without subjecting itself to the charge of giving undue or unreasonable preferences or advantages to such lines, or unlawfully discriminating against other carriers. In making arrangements for such use by other companies, a common carrier will be governed by considerations of what is best for its own interests.'

The Act does not purport to divest the railway carrier of its exclusive right to control its own affairs, except in the specific particulars indicated. 51 Fed. Rep. 474, 475; 4 Interstate Commerce Rep. 249.

Furthermore it is the settled construction of the Act, as we have before remarked, that it does not make it obligatory upon connecting carriers to enter into traffic arrangements for through billing and rating either as to passenger or freight traffic. This conclusion has been reached by all of the tribunals who have had occasion to consider the subject, and it is based on the fact that, in enacting the Commerce Act, Congress did not see fit to adopt that provision of the English railway and canal traffic act, passed in 1873, which expressly empowered the English Commissioners to compel connecting carriers to put in force arrangements for through billing and through rating when they deemed it to the interest of the public that such arrangements should be made. *Little Rock & M. R. Co. vs. East Tennessee, V. & G. R. Co.*, 4 Inters. Com. Rep. 261, 47 Fed. Rep. 771; *Kentucky & I. Bridge Co. vs. Louisville & N. R. Co.*, 37 Fed. Rep. 567, 630, 631; 2 R. E. 289;

2 Inters. Com. 351. See also the second annual report of the Interstate Commerce Commission (2 Inters. Com. Com. Rep. 510, 511.)

In the light of these adjudications, we are compelled to conclude that if the charge of an unreasonable discrimination cannot be successfully predicated on the ground that a railway company makes an arrangement with one connecting carrier for the use of its tracks and terminals, which it refuses to make with another, although the physical facilities for an interchange of traffic are the same, then the charge of discrimination cannot be predicated for through billing and rating with one carrier, and does not make it with another. The Interstate Commerce Act does not, it seems at present, make it obligatory on carriers to make arrangements of either sort, and does not give the commission power to compel such arrangements, but leaves connecting carriers, as at common law, to determine for themselves when such arrangements are desirable, and when undesirable.

Moreover, arrangements for through billing and rating will, as a general rule, necessarily involve an agreement for the use, to some extent, of each other's terminals and tracks: and by the express language of the statute, such use cannot be enforced without the consent of the owner. We are unwilling therefore, as the law now stands, to compel the defendant companies to afford the facilities which the complainant demands. As was said by Mr. Justice Jackson, then circuit judge in the case to which we have already referred. 'The law should be liberally construed in favor of commerce among the states as

its language will permit; but when complaint is made or relief is sought solely, or mainly in the interest of the common carriers engaged in the transportation of such commerce, the act complained of or the right asserted should not rest upon any doubtful construction, but should clearly appear to have been forbidden or conferred.'

We are also forced to conclude that if the public interest requires that interstate carriers shall be compelled to put in force arrangements for through billing and rating, and for the establishment of joint through lines, the statute should be more explicit, and that the Commission should be empowered to prescribe the terms of such arrangements upon a comprehensive view of the circumstances of each particular case."

In the case of *Chicago & Northwestern Railway Co. vs. Osborne*, 52 Federal Reporter 915, Justice Brewer speaking for the court said: "This shall not be construed as requiring any such common carrier to give the use of its track or terminal facilities to another carrier engaged in like business.' No power existed at common law, and none is given by the act to court or commission, to compel connecting companies to contract with each other to abandon full control of their separate roads, or to unite in a joint tariff. Express cases, 117 U. S. 1, 6 Sup. Ct. Rep. 567; *Little Rock & M. R. Co. vs. St. Louis, I. M. & S. Ry. Co.*, 41 Fed. Rep. 559. The whole matter is left to the voluntary action of the companies; and, in forming by agreement any joint tariff, the basis of division and the proportion of moneys each shall take is also a matter left to their determination. The denunciation of the fourth

section is against each separate common carrier, for its violation of the 'long and short' haul clause on its own line." "It is worthy of note that in the debates which attended the passage of this bill through the two houses, and while this matter was under discussion, it was again and again said by those participating in the debates that the line formed under the joint tariff of connecting companies was one separate and independent from that of either of the connecting companies; and also worthy of note that in the actual administration of affairs by the Interstate Commerce Commission the same thing has been constantly recognized." And on page 917 it is said: "And the order of the commission made June 21, 1887, provided that 'Such joint tariffs shall be so published by plainly printing the same in large type of at least the size of ordinary 'pica,' copies of which shall be kept for the use of the public in such places and in such form that they can be conveniently inspected, at every depot or station upon the line of the carriers uniting in such joint tariff, where any business is transacted in competition with the business of a carrier whose schedules are required by law to be made public as aforesaid.'"

In the case of *Tozer vs. United States* 52 Fed. Rep. 919, Justice Brewer speaking for the court said: "The decision of the court of appeals of this circuit, just announced in the case of *Railroad Co. vs. Osborne*, 52 Fed. Rep. 912, precludes the necessity of any extended discussion. It was there held that each company established its own tariff, and that the reasonableness of the tariff of one is not determined by that of any other. It was also

held that two connecting companies, forming by agreement a joint through tariff, create thereby, as it were, a line new and independent of that of either of the connecting companies; and hence that such joint tariff or the share which either takes of such tariff, is not the basis by which the reasonableness of its local tariff is to be determined. It is true that in that case the question arose under section 4, with reference to long and short hauls, while in this it arises under section 3, prohibiting undue and unreasonable preferences or advantages; but still the questions there decided are controlling here. If the joint through tariff of two connecting roads is not a standard by which the local tariff of either can be declared in violation of section 4, neither can it be a standard by which the question of undue preferences is determined under section 3. Because the local rate is in excess of the share of the joint rate, it does not follow that an undue preference or advantage has been given."

**As to Through Rates, (Wentworth), Interstate Commerce
Law Annotated.**

Page 24.

"Through rates are matters of agreement between carriers."

L. R. & M. R. R. Co. vs. Tenn., Va. & Ga. R. R.,
3 I. C. C. 1.

Copehart vs. L. & N. R. R. Co., 4 I. C. C. (3 I. C. C.
278.)

In re. Clark, Agent, 3 I. C. C. 649.

Wentworth, pages 23 and 37:

"Through rates are not necessarily illegal, which, when divided between carriers, give them less than their local rates provided that the through rate itself is not less than some one of the locals, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which it is imposed."

Quoting the above from *Lippman vs. Ills. Centr. R. R. Co.*, 2 I. C. C. 584, and citing:

C. R. I. & P. Ry. Co. vs. C. & A. R. R. Co., 3 I. C. C. 450.

N. O. Cotton Exch. vs. Ill. Cent. R. R. Co., 3 I. C. C. 534.

Hamilton, et al. vs. C. R. & C. R. R. Co., 4 I. C. C. (3 I. C. C. 482.)

Detroit B'd of T. vs. G. T. Ry. Co., 2 I. C. C. 315.

Poughkeepsie Iron Co. vs. N. Y. C. & H. R. R. C., 4 I. C. C. (3 I. C. C. 248.)

Wentworth:

"The apportionment of rates of different parts of a through line does not determine the charge to the public, but may be significant on the question of reasonable rates for the whole distance."

Brady vs. Penn. R. R. Co., 2 I. C. C. 131.

Wentworth, page 18:

"A railroad company is under special obligations to give reasonable rates for its local business, but there are many influences, which may affect through rates, while not

bearing upon local rates at all, or, if at all, in less degree."
Wentworth:

"McMorran vs. Grand Trunk Ry. Co. 3 I. C. C. 252.
Through rates are not required to be made on a mileage basis nor local rates to correspond with the division of a joint through rate over the same line. Mileage is usually an element of importance and due regard to distance proportion should be observed in connection with the other considerations that are material in fixing transportation charges."
Wentworth, page 34:

"Purely local rates are such as are made from station to station, and with some approximation to distance, and are never in railroad circles made use of in connection with rates for long distances, which are made in disregard of rates to and from numerous intermediate stations."

Martin vs. C. B. & Q. R. R. Co., 2 I. C. C. 25.
Wentworth, page 54:

"On a through and continuous line, the carrier can not escape responsibility for unjust charges by breaking haul in two, and calling itself a separate carrier."

Brady vs. Penn. R. R. Co., 2 I. C. C. 131.

In re. Invest'n of G. T. R. R. Co., 3 I. C. C. 89.

U. S. vs. Mellen, 53 Fed. Rep. 229.

"An indictment alleging that the share of a joint rate taken by one company is less than its local rate for a shorter haul, etc., is bad. (Citing and following the Osborne case.)

Ray—Freight Carriers, 652.

"Through rates are not required to be made on a mileage basis, nor local rates to correspond with the divisions." Citing: *Martin vs. Sou. Pac.*, 2 Interst. Com. Com. Rep. 1.

Railway Co. vs. Osborne, 52 Fed. Rep., 912.

(Middle page 914.)

"While it is the duty of the Court to see that the provisions established by congress are not frittered away on technical or trifling grounds, yet it is also their duty to see that such legislation is not carried beyond its clear scope, and that the owners of private capital invested in the business of transportation be not deprived of their liberty of contract and right of control any further than the law-making power has intended that they should be."

As to the distinction between joint rates and other rates.

Chicago N. W. Ry. Co. vs. Osborne, 52 Fed. Rep. 912;
3 C. C. A. 347.

"Where two railroad companies owning connecting lines of road unite in a joint through tariff, they form for the connecting roads a new and independent line, and the through tariff on the joint line is not the standard by which the separate tariff of either company is to be measured in determining whether such separate tariff violates act of Feb. 4, 1887, Sec. 4, which forbids greater compensation for a shorter haul than for a longer haul."

"Under Sec. 6 of the Interstate Commerce Law (Act Feb. 4, 1887, and the order of the commission of June 21,

1887, relating to the publication of joint tariffs, it is not necessary for either of the connecting lines to publish their joint tariff at a non-competing point or to volunteer information of such tariff to shippers."

Tozer vs. U. S., 52 Fed. Rep. p. 917.

"Where two connecting lines agree on a joint through tariff, such joint tariff, or the share of it which either takes is not the standard by which to determine whether either line violates, by its local rates, Section 3 of the Interstate Commerce Act forbidding undue preference." (Following the Osborne cases above quoted.)

Judson on Interstate Commerce, on page 190, Section 150 says:

"It has been uniformly held both by the Commission and by the Courts, that a local rate to a given point and the *pro rata* part of a through rate to the same point on the same line are not under similar circumstances and conditions. . . . It is not only in the presence of competition, but also in the increased cost of service, resulting from stoppages, that the conditions of through and local traffic are substantially dissimilar. Chicago, etc., R. R. Co. vs. Tompkins, 176 U. S. 167, 44 L. Ed. 417."

"If the joint through tariff of two connecting roads is not a standard by which the local tariff of either can be declared in violation of Section 4, neither can it be a standard by which the question of undue preference is determined under Section 3. Because the local rate is in excess of the share of the joint rate, it does not follow that an undue preference or advantage has been given."

Allen & Lewis vs. Oregon R. Nav. Co. (1899), 93
Fed. Rep., 16. (Citing and approving Osborne Case.)

"The proportion in which freight earned by two connecting roads under a joint tariff schedule is divided between them, is a matter for their consideration alone, and cannot be taken cognizance of by a court for the purpose of determining that the share received by one constitutes an unjust or discriminative rate under the Interstate Commerce Law."

"The fact that a shipper under a joint schedule of rates over the connecting railroads is charged a smaller rate on through shipments over the entire length of the joint line, than to intermediate points does not establish a claim that the latter rates are unjust or unreasonable, nor does it entitle him to claim that such rates are discriminative."

Chicago & Northwestern Railroad Company vs. John Osborne, cited in the 4 I. C. C. R. 257, and also in the 52 Fed. Rep. 912 in the opinion by Judge Brewer, it is said, on page 259:

"Reasonable, proper and equal facilities for the interchange of traffic" are commanded by the third section; but with the proviso. "This shall not be construed as requiring any such common carrier to give the use of its track or terminal facilities to another carrier engaged in like business." No power existed at common law, and none is given by the Act to Court or Commission, to compel connecting companies to contract with each other, to abandon full control of their separate roads, or to unite in a joint tariff. Memphis & L. R. R. Co. vs. Southern Exp. Co., ("Express

Cases,") 117 U. S. 1, 29 L. Ed. 791; Kentucky & I. Bridge Co. vs. Louisville & N. R. Co., 2 Inters. Com. Rep. 351, 2 L. R. A. 289, 37 Fed. Rep. 567; Little Rock & M. R. Co. vs. St. Louis, I. M. & S. Ry Co., 2 Inters. Com. Rep. 763, 41 Fed. Rep. 559. The whole matter is left to the voluntary action of the companies; and in forming by agreement any joint tariff the basis of division and the proportion of moneys each shall take is also a matter left to their determination."

In the case of Interstate Commerce Commission vs. Baltimore & O. R. R. Co., 145 U. S. 284, 36 L. ed. 703 it is said "The principal objects of the Interstate Commerce Act were to secure just and reasonable charges for transportation; to prohibit unjust discriminations in the rendition of like services under similar circumstances and conditions; to prevent undue or unreasonable preferences to persons, corporations, or localities; to inhibit greater compensation for a shorter than for a longer distance over the same line; and to abolish combinations for the pooling of freights. It was not designed, however, to prevent competition between different roads, or to interfere with the customary arrangements made by railway companies for reduced fares in consideration of increased mileage, where such reduction did not operate as an unjust discrimination against other persons traveling over the road. In other words, it was not intended to ignore the principle that one can sell at wholesale cheaper than at retail. It is not all discriminations or preferences that fall within the inhibition of the statute only such as are unjust or unreasonable."

In the case of Gulf, C. & S. F. Ry. Co. vs. Miami S. S. Co., 86 Fed. Rep. 415, it is said, "The appellants contend that the several arrangements effected between the Mallory Line and the defendant railway companies do not violate the common law, or the Interstate Commerce Law of the United States, or any statute of the State of Texas. They contend that there is no obligation imposed upon the defendant companies to make any arrangement for through joint shipments, with a joint tariff, through billing and a waiver of prepayment of freight, with the Lone Star Line because of the fact that they have such arrangements with the Mallory Line. They contend that there is no general usage or custom having the force of law or local custom at Galveston, Tex., which gives to one connecting carrier the right to have the same arrangements as to through shipments on joint tariffs which other carriers may have acquired by contract. They contend that the arrangements existing between the Mallory Line and the defendants are several contract arrangements between it and each of the defendants, and that the same are in no way affected by the fact, if it is a fact, that there was an understanding in advance between the defendant railway companies that they would each make a several arrangement with the Mallory Line." And on pages 417 and 418 it is said, "Counsel for the appellee cite sections 2, 3, and 7 of the act to regulate commerce of February 4, 1887; also section 2 of the act of March 2, 1889 (amending section 10), to amend the act to regulate commerce. Section 2 of the act of 1887 clearly defines what shall constitute the unjust discrimination which it prohibits and cannot be made to apply to this

case without assuming that the contract existing between each of the defendants and the Mallory Line for the extension of the business of each over that line does not constitute substantially dissimilar circumstances and conditions under which the defendants are doing business with the Mallory Line from the circumstances and conditions under which the Lone Star Line is claiming the right to do business with the defendants. Such an assumption, we think, is repelled by the authorities which support our conclusions as to the defendants' contract arrangements being valid at common law. To support appellee's claim under the third section of the act to regulate commerce, we should have to hold that the defendant carriers could not contract with the Mallory Line for extending their business over that line without at the same time making a similar contract with any other party who is shown to be able and offering to do the same carrying with equal safety, dispatch, and responsibility, and that to decline to let such stranger carrier into their contract, or to make an equivalent contract with it, is to give an undue and unreasonable preference and advantage to the line contracted with and to subject the stranger to an undue and unreasonable prejudice or disadvantage in respect to the traffic it desires to carry. If it should not be so held, the contract arrangements which the defendant carriers have with the Mallory Line do not constitute the facilities for the interchange of traffic, or that discrimination in rates and charges between connecting lines to which the second paragraph of section 3 applies. The last clause of the second paragraph of section 3 provides that that paragraph shall not be construed as requiring any such

common carrier to give the use of its track or terminal facilities to another carrier engaged in like business. It is provided in section 6 that every common carrier subject to the provisions of the act shall file with the commission copies of all contracts, agreements or arrangements with other common carriers in relation to any traffic affected by the provisions of the act to which the carrier may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the carriers operating such lines or routes establish joint tariffs of rates of fares or charges for such continuous lines or routes, copies of such joint tariffs shall also in like manner be filed with the commission. These provisions do not expressly authorize the separate carriers to contract with reference to through routes and joint tariffs because the carriers had that authority. But these provisions do necessarily imply the recognition that that authority did exist, and that it could be exercised after the passage of the act in like manner as it was known to have been exercised for long periods before the passage of the act, and to be in general use at the time of its passage. The act does not expressly authorize the separate carriers to establish rates, fares, and charges on their respective lines, but it recognizes that such carriers have that right, in like manner as it recognizes that two or more connecting carriers have the right to contract for through routing and a joint rate, subject in each case to the leading limitations embraced in the first four sections of the act.

The fact that these parties were left free to contract

in reference to this subject necessarily includes a freedom to decline to contract in case they cannot agree upon the terms, or in case they consider it to their interest not to contract on any terms. This legislation was had, as all useful legislation is had, in reference to the existing conditions and the manifest tendencies of the subject embraced. It was at that time matter of common knowledge, and minutely within the knowledge of the committees of congress which had this subject in charge, that freight and passengers were being carried through all the states from one extremity of the Union to the other, over continuous lines or routes operated by more than one carrier on tariffs of rates and fares and charges regulated as to their amount the time and the place of their receipt, the *pro rata* division thereof by the respective carriers, the accounting for, paying, and distribution of the same by and to the respective carriers according to their contract agreement or understanding, express or implied." And continued on 419 it is said, "The Interstate Commerce Commission was early impressed with the view that there were cases in this country where through routes and reduced through rates, which would facilitate the movement of traffic, and thereby benefit the public, are prevented from being made by the unreasonable refusal of carriers to unite in granting such facilities; and, being impressed with the view that the statute was apparently designed to require connecting carriers to join in the formation of through routes at lower aggregate rates than a combination of their locals, have repeatedly called the attention of congress to the fact that it had failed to provide the machinery necessary to accomplish

that purpose. As the commission, in one of their latest opinions, say, the correction of this defect requires the exercise of some public authority which can investigate the circumstances of each case, allow the parties to a proposed through rate an opportunity to be heard, and fairly determine the matter—including, if need be, the aggregate rate and divisions thereof—with due regard to the interest of the several carriers as well as the public. Such a scheme for establishing compulsory through rates should be surrounded by proper safeguards, and its operation limited by proper restrictions. *Atchison, R. & S. F. R. Co. vs. Denver & N. O. R. Co. supra*; *Interstate Commerce Commission vs. Baltimore & O. R. Co.*, 145 U. S. 263, 12 Sup. Ct. Rep. 844; *Cincinnati, N. O. & T. P. Ry. Co. vs. Interstate Commerce Commission*, 162 U. S. 184, 16 Sup. Ct. 700; *Texas & P. Ry. Co. vs. Interstate Commerce Commission*, 162 U. S. 197, 16 Sup. Ct. 666; *Interstate Commerce Commission vs. Alabama M. R. Co.*, 18 Sup. Ct. 45; *Kentucky & I. Bridge Co. vs. Louisville & N. R. Co.*, 37 Fed. 626 et. seq.; *Railroad Co. vs. Platt* (decided by the Interstate Commerce Commission June 26, 1907.)"

In the case of the *Southern P. Co. vs. Interstate Commerce Commission*, 200 U. S. 554, 50 L. ed. 593 it is said, "As the carrier is not bound to make a through contract, it can do so upon such terms as it may agree upon; at least, so long as they are reasonable and do not otherwise violate the law. In this case, the initial carrier guarantees the through rate, but only on condition that it has the routing. It was stated by the late Mr. Justice Jackson of this court, when circuit judge, in the case of *Interstate Commerce*

Commission vs. Baltimore & O. R. Co. 3 Inters. Com. Rep. 192, 43 Fed. 37, as follows:

'Subject to the two leading prohibitions that their charges shall not be unjust and unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or advantage, or subject to undue prejudice or disadvantage persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessity of commerce, and generally to manage their important interests upon the same principles which are recognized as sound and adopted in other trades and pursuits.'

This statement was approved by this court in Cincinnati, N. O. & T. P. R. Co vs. Interstate Commerce Commission, 162 U. S. 184, 197, 40 L. ed. 935, 939, 5 Inters. Com. Rep. 391, 16 Sup. Ct. Rep. 700.

Having this right to agree on a joint through tariff on terms mutually satisfactory, we cannot find anything in the Commerce Act which forbids the agreement with such a condition therein as to routing. It is said that the sixth section, properly construed, prohibits such condition. We confess our inability to find anything in that section which does so."

147 Fed. Rep. 53, Delaware & L. W. R. Co. vs. Kutter, it is said:

"By its answer the defendant admitted the execution of the contract and alleged as a justification for terminating

it (1) that the contract was *ultra vires*, and contrary to public policy; (2) that it was made in violation of the acts of Congress known as the "Anti-Trust Act" and the "Interstate Commerce Act"; and (3) that Westcott had violated the contract by entering into other contracts with competitive railroads inconsistent with his duty to the defendant and the obligations of his contract.

The plaintiffs by their reply to the answer set up as a bar to the defense alleged by the defendant the estoppel of a former adjudication in an action between the parties in the Supreme Court of the state of New York.

The trial judge did not make special findings of fact or of law, but made a general finding that the plaintiffs were entitled to recover \$137,853, and interest and ordered judgment accordingly."

And on page 57 it is said: "Upon the facts thus presented, the defendant upon the trial moved the court for a judgment in its favor upon the grounds that the defense alleged in its answer had been established, and that there was no evidence to support a judgment for the plaintiff. The assignments of error are based upon the exceptions taken by the defendant to the refusal of its motion.

When upon a trial without a jury, the findings of fact and of law by the court are general, the exceptions to a ruling denying a motion for judgment for the defendant present for the consideration of an appellate court the question whether upon the whole evidence, with all the inferences which a jury could justifiably draw from it, the plaintiff was entitled to recover. The general finding is to

be accepted as conclusive upon all matters of fact, and as equivalent to the verdict of a jury, and the Appellate Court cannot review the weight of the evidence. *Lancaster vs. Collins*, 115 U. S. 225, 6 Sup. Ct. 33, 29 L. ed. 373; *Martinton vs. Fairbanks*, 112 U. S. 670, 5 Sup. Ct. 321, 28 L. ed. 862; *Lehnen vs. Dickson*, 148 U. S. 71, 13 Supt. Ct. 481, 37 L. ed. 373.' Continuing on page 63 it is said:

"The contention that the contract contravened the provisions of the Interstate Commerce Act may likewise be briefly disposed of. The argument for the plaintiff in error is that the contract is obnoxious to section 3 of that act, (Act Feb. 4, 1887, C. 104, 24 Stat. 380 U. S. Comp. St. 1901, p. 3155) because it gave an undue and unreasonable preference to Westcott in the business of transporting milk. That act deals with the effect or results of contracts, and has no operation directly upon the contracts themselves; but assuming that the contract is void if the contention that it gave an undue and unreasonable preference is sound, the case is not one where any such preference was given. The wrong prohibited by the section is a discrimination between shippers. It was designed to compel every carrier to give equal rights to all shippers over its own road, and to forbid it by any device to enforce higher charges against one than another. *Wright vs. United States*, 167 U. S. 516, 17 Sup. Ct. Rep. 822, 42 L. ed. 258. The mere circumstance that there is, in a given case, a preference or advantage, does not of itself show that such preference or advantage is undue or unreasonable within the meaning of the act. *Texas & Pacific R. R. Co. vs. Interstate Commerce Com.*, 162 U. S. 219, 220, 16 Sup. Ct. 666, 40 L. ed 940. To come

within the inhibition of the act the positions of the respective persons or classes between whom differences in charges are made, must be compared with each other, and there must be found to exist substantial identity of situation and service, accompanied by irregularity and partiality resulting in undue advantage to one, or undue disadvantage to the other."

We are not unmindful of the general proposition that contracts which are prohibited by law are invalid and cannot be enforced. However, to this general rule there are five exceptions which are recognized by high authority as well as persuasive reasoning.

The contracts are upheld.

"1. Where public policy requires the intervention of the Court;

2. Where the parties are not *in pari delicto*;

3. Where the law which makes the agreement unlawful was intended for the special protection of the party seeking relief;

4. Where the illegal purpose has not been consummated:

5. Where the party complaining can exhibit his case without relying on the illegal transaction."

9 Cyc. Law & Proc. p. 550, Packard vs. Bryd 73 S. C. 1, 57 S. E. 678, 6 L. R. A. (N. S.) 549; Fox vs. Rogers 171 Mass, 546, 50 N. E. 1041; Eastern Expanded Metal Co. vs. Webb Granite & Cornish Co. (Mass.) 81 N. E. 251; Tootle vs. Taylor 64 Iowa, 629, 21 N. W. 115; Bemis

vs. Beecher 1 Kan. 226; Mason vs. McLeod 57 Kan. 105; 41 L. R. A. 548, 57 Am. St. Rep. 327, 45 Pac. Rep. 76.

To invalidate a contract for illegality, the illegality must be inherent. It is not enough that it be associated even closely. It must be a part of the contract. *Armstrong vs. Toler*, 11 Wheat. 258, 6 L. ed. 468; *Union National Bank vs. Matthews*, 98 U. S. 621, 25 L. ed. 188; *Merchants Cotton Press Co. vs. Insurance Co. of N. A.* 151 U. S. 368, 38 L. ed. 195, 4 Int. Com. Rep. 499, 14 Sup. Ct. Rep. 367; *Larned vs Andrews*, 106 Mass. 435, 8 Am. Rep. 346.

The Laches of the Railroad Company in Failing to File and Publish Its Joint Through Rate After It Was Made Should Not Enable It to Defeat Its Contract or to Relieve It From Liability Under Its Contract.

It was argued in the state court by the plaintiff in error that it was the duty of the Northern Connecting Lines to publish the joint rate. We do not so interpret the act; we think that under section 6 of the act the duty rests on each carrier that enters into a joint through rate to see that the rate is filed and published. While it was held by this court in the case of *Railroad Co. vs. Hefley* 158 U. S. 98, 15 Sup. Ct. Rep. 802, 37 L. ed. 910 that when a rate is once filed and published as required by law that a carrier can not deviate from that rate, yet in the *Hefley* case just cited there was no dispute about the filing or publishing of the rate in compliance with the law. In that case there was a regularly filed and published rate over the entire route of shipment. In the case at bar it is not claimed that there

was any filed or published rate which conflicted with the rate given, except the proportional rate with certain other roads on a part of the haul. Under the authorities already cited in this brief, that did not prevent the Kansas City Southern Railway Company from making a different proportional rate with the Northern Connecting Lines and if the rate already referred to with the Great Western and other roads did not apply, then there was no other filed or published rate which conflicted with the contract rate or the proportional rate made between the Kansas City Southern and Northern Connecting Lines, and which was given to Forrester Brothers. The courts have held in the cases cited that connecting carriers are not compelled to make a joint through rate with each other; but that they had a right to do so and when they did make a joint rate that it should be filed and published. It has also been held that when two roads get together and make a joint rate that this constitutes a new line of railroad separate and distinct from either road and that the joint rate thus fixed (and not one portion of the same) is the one that is subject to scrutiny by the commission and the courts and in which the public is interested. It is also held that the apportionment of the through rate need not correspond with the local rate of either road or with the proportional rate that either road has with other roads provided the rate in its entirety is reasonable (and no question has been raised about the reasonableness of this rate). The proposition then is this: If two roads getting together constitute a new line, could a new line under the law as it existed at that time make a contract of shipment with the shipper on terms that were

reasonable, violate its contract, charge the shipper more than ten thousand dollars more than it agreed to charge the shipper under the contract simply because it did not comply with the law and file its rate as the law required it to do? Can it set up its laches or its failure to comply with the Interstate Commerce Law to defeat its own contract? The law does not require the shipper to file and publish the rate but it imposes this duty upon the carriers. At the time that these shipments were made the law made it the duty of the carriers to file and publish their rates, but there was no provision in the act at that time, as we understand it, as there is at the present time, that prohibited railroads from doing interstate business unless their rates were filed and published. The fact that the law has since been changed in this regard is a circumstance showing that the Commission and Congress realized the necessity of the change and also the necessity of compelling common carriers to make joint rates and to file and publish them before they can do any interstate business. A number of the state courts have passed upon the proposition of unpublished rates, and the effect of unpublished rates on contracts.

In the case of *Virginia Coal & Iron Co. vs. Louisville & N. R. Co.*, 37 Southeastern Reporter 315, (Supreme Court of Appeals of Virginia) it is said: "There is nothing in the Interstate Commerce Act, as we understand it, which prevented the defendant from establishing a through rate from Appalachia to Worthington, based upon its existing rate and rates quoted to it by the connecting carriers which were subject to the Interstate Commerce Act. The rate thus established was made public and filed with the Inter-

state Commerce Commission by the defendant, but not by the other carriers which were subject to the Interstate Commerce Act. Did their failure to do this make the plaintiff's contract with the defendant for the shipment of coke illegal, or did it not merely subject them to the penalties of the act? Surely a shipper will not be deprived of the benefit of an otherwise valid contract for the transportation of his goods because connecting carriers have failed to perform their duty in giving publicity to the rate. If he can, no one will be safe in making contracts for the sale or transportation of his goods based upon the published rates of the initial carrier.

We are of the opinion that the contract in question was not in violation of the Interstate Commerce Act, and that the plaintiff was entitled to recover from the defendant the amount of freight collected in excess of the agreed rate.

The judgment of the circuit court must be reversed, and this court will enter such judgment as it ought to have entered."

In the case of *Cherry vs. Chicago & Alton Ry. Co.* 191 Missouri 489, 90 Southwestern 381, 2 L. R. A. (N. S.) 695, it is said "A contract with a passenger as to the duration of his ticket can not be effected by the failure of the carrier to file with the Interstate Commerce Commission its acceptance of the agreement by the passenger association to establish the limit named therein." And on page 702 it is said. "But it is said that, in order to make the action of the defendant in agreeing to the sixty-day return limit binding upon it, it was necessary for it to file

its acceptance on those terms with MacLeod, and also a copy of such acceptance with the Interstate Commerce Commission. True there is testimony that such is the procedure under ordinary circumstances. But in this case the defendant's letter to MacLeod of May 22d, authorizing him to record defendant's vote with the majority on the proposition, was a precedent continuing acceptance of the proposition if it was adopted by a majority of the members of the association, and did not require a subsequent action by the defendant, but became effective the instant the majority of the association so voted. The question of whether the defendant, after receiving notice from MacLeod that all of the roads interested had agreed to the proposition, failed to file its acceptance with the Interstate Commerce Commission cannot affect its contract in this case. For the plaintiff neither had notice of any such requisite, nor did he have power to compel the defendant so to do. So far as the plaintiff was concerned, he accepted the invitation held out by Byrne to the public generally to buy tickets of this character, and he was not required to look further to ascertain whether the defendant had filed its acceptance with the Interstate Commerce Commission."

It is the view taken by the U. S. Circuit Court, and adopted by Mr. Judson in his recent text book, that there are circumstances under which Courts should, in justice, lend their aid in the enforcement of an unpublished rate against a carrier. The reasoning by which such views are supported is very strong and convincing and wholly in harmony with the evident purpose and spirit of the Act. (86 Fed. Rep. 846 hereinafter quoted.) Notwithstanding

a most diligent search, no single case can be found which holds to the contrary, so far, at least, as the circumstances are parallel to the case at bar. It is true there are cases which present circumstances where a shipper, without knowledge thereof on his part, was given a rate by a railroad agent, which, either by mistake or by design on the part of the agent, was lower than the published rate properly governing the shipment at the time, and it was held that it made no difference how such rate came to be quoted, that it was preferential in fact, in violation of the Act and, therefore, void. But these cases are all very different from the case at bar, where no published tariff stood in the way of a contract for a fair and reasonable through rate. The case in the 86 Fed. Rep. 846, from which we shall presently quote at some length, expressly overrules a case in the 81 Fed. Rep. 277, and strongly contends that, in the absence of express provisions in the Act, where a shipper, himself innocent, has by mistake been given a contract for a rate by a railroad which is less than a legal tariff on file, the contract will not on that account "be struck with nullity."

If these courts have carried this reasoning to this extent in such a case, with how much more force must it apply to the case of Forrester Brothers, which is wholly free from any misquoted rate and from any ruling tariff then in existence for such joint rate, and where, for these reasons, both shippers and railroads, with open eyes and full right to make an agreement, had done so, and had therewith "put in effect" a new through rate.

Mr. Judson in his work on Interstate Commerce on Page 276, Sec. 235, on the subject of the "Enforcibility of

Unpublished Rate against the Carrier" refers to the case of Pond-Decker Lumber Co. vs. Spencer, 86 Fed. Rep. 846 (decided in 1898 and reversing 81 Fed. Rep. 277), and speaks of the opinion of the court in that case as follows:

"The Court said in its opinion that the Interstate Commerce Act nowhere intimates by any express language that contracts made by carriers within the scope of their general powers are to be declared null and void in any collateral proceeding which may arise, by reason of some alleged or supposed departure from the requirements of that Act with reference to fares and charges. It was not expected that each shipper would be an expert rate sheet reader, or that he should have to visit the local offices of each one of the connecting lines to inspect the rate sheets that were to be posted at certain points according to the requirements of the Interstate Commerce Act, in order to advise himself as to what are the local rates on the connecting carriers between the points at which the connecting carriers connect, nor was it required of him before making a contract that he should make inquiry at the offices of the Commission in Washington City to learn if a through joint rate over the route his goods were to be carried were on file there and, if so, its terms. The court said that any such rule would put on shippers a burden too greivous to be borne and opened the doors for the practice of fraud and oppression by the agents of corporation carriers. See also opinion of Commission in 6 I. C. C. R. 685, and as to the general rule, see *Mobile & Ohio R. Co. vs. Dismukes*, 94 Ala. 131, 17 L. R. A. 113; *Tracy vs. Talmage*, 14 N. Y. 162."

The United States Circuit Court of Appeals in the case of Pond-Decker Lumber Company vs. Spencer, 86 Fed. Rep. 846, reversing the case of Central Trust Co. vs. Georgia Pac. Ry. Co. 81 Fed. Rep. 277, said:

"It is not suggested that the contract between the intervener and Fletcher without reference to the Interstate Commerce Act was not a valid contract, and one which the intervener could have enforced against the corporations that Fletcher was authorized to bind. Counsel for the appellee have not, either in their oral argument or in their brief, pointed out to us the particular provision or provisions of the Interstate Commerce Act which declare or render the contract between Fletcher and the intervener invalid. When they do undertake to locate the provision or provisions of that Act which have that effect, we think they will experience some difficulty. Leaving out of view for the present all consideration of the very exceptional character and amount of this through shipment, intended to have been made over three connecting but independent carriers in one state, passing partly through three other states, and terminating in a fifth state, we think the rule suggested by the contention of counsel would put an unreasonable burden upon shippers. It would require that each shipper should be an expert rate sheet reader. Besides that, he would have to visit the local offices of each of the connecting lines, to inspect the rate sheets that are to be posted at certain points according to the requirements of the Interstate Commerce Act, in order to advise himself as to what were the local rates on the connecting carriers between the points at which the separate carriers connected. It would require of him

to know or assume as a matter of law, which is not law at all, that the carriers could not contract for a through route at a lower rate than the combination of the locals would aggregate.

It is expressly provided that in case independent connecting carriers contract or agree with each other for through carriage over their lines, and fix through rates therefor, such joint tariffs shall be filed with the Commission (whose office is in the city of Washington); and such joint rates shall be made public when directed by the Commission, and the Commission shall from time to time prescribe the measure of publicity which shall be given to such rates. Section 6, Act to Regulate Commerce. Must the shipper before making any contract,—that is, getting any binding rate for through carriage,—make personal investigation or inquiry at the offices of the Commission in the City of Washington to learn if a through joint rate over the route his goods are to be carried has been filed there, and what are its terms? And if he should make a mistake in any of these inquiries, and obtain a contract with the carrier for a through rate, would this contract be struck with nullity, so that not only the carrier contracted with could plead the mistake and avoid the contract, but any stranger, or, to state it most fairly, either of the other connecting carriers in the route that violated its contract of carriage could question the validity of the contract made for a through rate with all of the others?

Undoubtedly, the Interstate Commerce Act purposes to control the carriers in such a way as will insure to persons

and localities shipping by them, just, fair and equal treatment.

It commands many things to be done. It forbids the opposite of these, and any and every evasion of them by commission or omission. It denounces penalties against the carriers, or, where the carrier is a corporation, against its agents for the doing of things forbidden, or procuring or abetting the doing thereof, or the omission to do the things required, or the procuring or abetting any person to so offend. It provides remedies for the enforcement of its requirements in reference to just and equal treatment by carriers of all persons and localities for whom they carry. But it nowhere intimates by any express language that contracts made by carriers within the scope of their general powers are to be declared, in any collateral proceeding which may arise, null and void by reason of some alleged or supposed departure from the requirements of that act with reference to the matter of fares and charges. On the contrary, as we read the act, it is strongly implied that the carrier will not only be liable to the government and to any private party injured for its violations of the provisions of the Interstate Commerce Act, but that it will also most certainly be bound on its contract to the party with whom it contracts. . . . If it were otherwise, it would, as we have said, put on shippers a burden too grievous to be borne, and open the door to the practice of fraud and oppression by the agents of corporation carriers."

We do not cite the Pond-Decker case or the Dismukes case, *supra*, as authority as against a regularly established,

filed and posted tariff, but we do say that the reasoning of the courts in these cases is persuasive in a case where the railroad companies have not complied with the provisions of the Interstate Commerce Act in reference to filing, posting, etc., and especially is such reasoning applicable to the case at bar.

The state court did not find that any preference or advantage was given Forrester Brothers, under its contract to that which was given to any other shipper between the same points and over the same lines of railroad that this grain was shipped over. The state court said (Printed record, p. 301) that, "If the invalidity resulted from the existence of legally established rates with which the rate relied upon by the plaintiff was in conflict, it was incumbent upon the defendant to allege and prove such fact. *Mo. Pacif. R. R. vs. Relf*, recently decided by this court; *Atlanta K. & N. Ry Co. vs. Horne*, 106 Tenn. 73; 59 S. W. 134; *Southern Pacif. R. R. Co. vs. Redding (Texas)* 43 S. W. 1061; *Southern Kansas Ry. Co. vs. Burgess*, 90 S. W. 189.

This was not done. In the absence of such proof we are compelled to hold, as the trial court evidently did, that there was no legally established local rates which were in conflict with the rate made for Forrester Brothers, or which would in any manner affect the validity of the last named rate. The joint rate made by the Kansas City Southern in connection with connecting roads other than the northern, connecting lines, and to the making of which the lines last named, and Forrester Brothers were not parties and to which they did not consent, could not affect the joint

rate previously made for Forrester Brothers. A joint rate is only binding upon the lines which agree to it and shippers who ship under it. We think the existence of this rate does not affect any of the questions presented here. It appears that Forrester Brothers, relying upon their contract purchased large quantities of grain and shipped it over these contracting lines. It does not seem reasonable, therefore, that one of such lines could nullify the rate agreed upon merely by agreeing with other parties for a different rate where the shipment is between different points, and over different roads."

Under the authorities already cited in this brief the findings of the state court are conclusive in this court, and while there is no finding of the state court that even the proportional rate with the other roads was filed and published as the Interstate Commerce Law required, yet as the court specifically finds that this grain was not shipped over the same roads or between the same points specified in the proportional tariff offered in evidence in connection with the other roads; and in the amendments to such tariff it is apparent under the authorities already cited in this brief that the proportional rates with other roads, even if filed and published, did not preclude the Kansas City Southern Railway Company from making a different proportional rate with the Northern Connecting Lines.

When the Northern Connecting Lines united on a through rate this new line thus formed was wholly independent of the line formed by the proportional rate between Leavenworth and Atchison and St. Joseph with other roads.

Besides the tariff offered in evidence with its various amendments stated specifically the various roads which it should be applied to and the points of shipment to which it should apply. Neither of which corresponds to the shipments in this case. (Printed record, pp. 111 to 114 inclusive.) An examination of the record will show that the proportional rates of the Kansas City Southern upon which it places its defense applied to no other roads or to no other places except to the roads and the places specified in the tariff and the amendments as shown in the printed record pp. 210 to 216 inclusive. The court found that the rate charged was the sum of the two local rates (Printed record, p. 302) and that the rate charged did not conflict with any other rate established under the Interstate Commerce Law. (Printed record, p. 302.) If the rate was the sum of the two local rates and, taking the entire distance into consideration, it was the same rate that all other shippers paid between the same points, or at least the contrary was not shown, how could the rate be held to be preferential or unjust or to violate even the spirit of the Interstate Commerce Law?

DECISIONS UNDER ELKINS LAW NOT APPLICABLE.

In the state court the plaintiff in error relied largely upon the case of C. & A. Ry. Co. vs U. S., 156 Fed. Rep. 558 and the U. S. vs. Standard Oil Co., 155 Fed. Rep. 305; the Armour Packing Co. vs U. S. 153 Fed. Rep. p. 1; these cases were all brought under the Elkins Act. The Elkins Act did not take effect until February 19, 1903; the contract of Forrester Brothers was made in 1901 and the

shipments were made in the Fall of 1901 and the Spring of 1902. We need not suggest that the Elkins Law could have no effect on the shipments of Forrester Brothers. Some reliance was also placed on the case of Gulf etc. Ry. Co. vs. Hefley, 158 U. S. 98 to 105, 15 Sup. Ct. Rep. 802, 39, L. ed. 910; and also the case of the Texas & Pacific Ry. Co. vs Mugg 202 U. S. 242 and 245, 26 Sup. Ct. Rep. 628, 50 L. ed. 1011. Neither the Hefley case or the Mugg case just cited is in point. In the former case this court held that where the Texas Statute provided that the shipper could hold the railroad company to the rate specified in the contract and it was shown that the legally filed and published rate applicable to the shipment conflicted with the contract, that the statute was void for the reason that it conflicted with the Federal Law regarding Interstate Commerce. In the Mugg case it is held that where the contract of shipment conflicted with the legally filed and published rate that the contract was then invalid. In this case the Supreme Court of Kansas specifically found that the contract did not conflict with any legally filed or published rate which was applicable to the shipment. (Printed record, pp. 299 to 302.)

The case of the Armour Packing Co. vs. U. S. 153 Fed. Rep. 1, went to the Supreme Court of the United States and it is reported in 28 Sup. Ct. Rep. 428. In that case the proposition before the court was when a shipper made a contract with the railroad company and it was valid at the time that it was made and in no way conflicted with the established rate, but the rate of the railroad company was subsequently changed by the railroad

company filing with the Interstate Commerce Commission and published according to law a different rate to that specified in the contract, whether the contract applied or the increased rate applied. The court held in that case that notwithstanding the contract the shipper would have to comply with the established rate. In that case Chief Justice Fuller and Associate Justices Peckham and Brewer dissented. That case, however, was tried under the Elkins Law and as that law was not in effect at the time of the shipment of Forrester Brothers it is not applicable and besides the state court in the present case found that there was no published rate which conflicted with the contract.

SOME PROVISIONS OF THE ELKINS LAW.

The Elkins Act provides:

“The wilful failure upon the part of any carrier subject to said acts, to file and publish the tariffs or rates and charges as required by said Act or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concessions or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereto whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is re-

quired by said Act to regulate commerce and the Acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced. Every person or corporation who shall offer, grant, or give or solicit, accept or receive any such rebates, concessions, or discriminations shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars. In all convictions occurring after the passage of this Act for offenses under said Act to regulate commerce, whether committed before or after the passage of this Act, or for offenses under this section, no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed as part of the penalty being hereby abolished."

. "Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereto, or participates in any rates so filed or published, that rate as against such carrier, its officers, or agents in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act."

. "Sec. 4. That all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, but such repeal shall not affect causes now pending nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this Act."

THE ACTION AGAINST RIGHT RAILROAD.

It was argued in the state court that the action for overcharges should have been against the Northern Connecting Lines and not against the Kansas City Southern Railroad Company. The evidence in the case shows that the through rate was made between the two roads; that they agreed on the proportion that each road should charge for the through haul; that the Northern Connecting Lines charged the shippers just the amount that they agreed to charge; that the Kansas City Southern Railway Company charged over \$10,000.00 more than it agreed to charge these shippers; the Northern Connecting Lines complied with the contract with the shippers; the Kansas City Southern Railway Company violated the contract. It does not look reasonable that Forrester Brothers could maintain an action against the Northern Connecting Lines which made no overcharges and that the Kansas City Southern Railway Company should be permitted to keep the overcharges which it made Forrester Brothers pay. Besides the grain was through billed and the through billing was broken into at Kansas City for the convenience of the roads and the handling of the grain and the Kansas City Southern Railroad Company was the road which received the money which the Albers Commission Company is seeking to recover. The company which received the money which it had no right to receive in the first instance should be the company that should refund the same.

Section 7 of the Interstate Commerce Act provided:

"That it shall be unlawful for any common carrier

subject to the provisions of this Act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act.”

THE ASSIGNMENT OF ERROR.

The assignments of error are found in the printed record on pages 308 to 312 inclusive.

In the first assignment of error (Printed record, pp. 308 and 309) it is claimed on the part of the plaintiff in error that the state court did not have jurisdiction of this case and that the state court erred in overruling the motion to dismiss the garnishment proceedings for the reason that the state court did not have jurisdiction. This proposition has already been discussed in this brief under the title “The State Court has Jurisdiction”, and further argument is unnecessary.

In the second assignment of error (printed record p. 309) it is claimed on the part of the plaintiff in error that the trial court erred in not sustaining the demurrer of the

plaintiff in error in the trial court to the evidence of the plaintiff. The record shows that the plaintiff in the trial court proved the contract, the excess charges made by the Kansas City Southern Ry. Co., and all facts necessary to make out a *prima facie* case. Printed record, pp. 20 to 108.)

This court will not review a decision of the state court on a writ of error when the decision of the state court is based on a question of state practice or procedure.

(In re. Spies.) 123 U. S. 131, 8 Supt. Ct. Rep. 22 F. G. Oxley Stove Co. vs. Butler Co., 166 U. S. 648, 17 Sup. Ct. Rep. 709, 41 L. ed. 1149.

The rule in Kansas is that a demurrer to the evidence should be overruled when the plaintiff in the trial court has made a *prima facie* case or has established such facts that a court or a jury from the facts proven and such inferences as may reasonably be drawn from the same make a *prima facie* case. Brown vs. A. T. & S. F. Co., 31 Kan. 1, 1 Pacific Rep. 605; Calahan vs. Ward, 45 Kan., 545.

In the third assignment of error (Printed record, p. 309) it is claimed on behalf of the plaintiff in error that the state court erred in holding that the state court had jurisdiction of this case. As that proposition has been discussed at some length, we offer no further suggestions.

The fourth assignment of error (Printed record, pp. 309 and 310) is based on the refusal of the trial court to give instruction number two. It is apparent that no error can be predicted on this assignment for the reason that the jury was waived and no jury was prejudiced by the failure

of the court to give this instruction or any other instruction requested. Besides if the state court had jurisdiction and the judgment was correct in accordance with the facts found by the state court the plaintiff in error has not been deprived of any right, title, privilege or immunity by reason of any conclusion of law which the state court may have made. We say this not only with reference to the fourth assignment of error but of each of the assignments or error of the plaintiff in error. Besides the court in its conclusions of law made a correct statement of the law under the facts as they are found in this case. A number of the assignments are predicated on the proposition that the contract would be invalid unless the through rate was filed with the Interstate Commerce Commission. As the plaintiff in error failed to prove and the court did not find that any other rate applicable to the shipments in question was filed with the Interstate Commerce Commission and published according to law and this duty devolved on the railroad company, and not on the shipper, the contract was valid. Hence the trial court committed no error in refusing the instructions or conclusions of law to the effect that the contract would be invalid unless the through rate was filed and published. No error can be predicated on the seventh assignment of error (Printed record, pp. 310, 311, and 312) or any of the propositions stated in this assignment of error for the reason that no findings of fact aside from the general judgment were requested by the plaintiff in error at the trial court, and the plaintiff in error is concluded by the findings of fact made by the supreme court. Whether those findings are correct or incorrect they are conclusive and the only question before this court is

whether, taking the facts as found by the Supreme Court of Kansas, the decision or judgment of the Supreme Court violated any of the provisions of the Interstate Commerce Act.

Mo. Pacific R. R. Co. vs. Fitzgerald, 160 U. S. 556, 16 Sup. Ct. Rep. 389, 40 L. ed. 536; Craig vs. Missouri, 4, Peters 410, 7 L. ed. 930; Telluride Power Transmission Co. vs. Rio G. W. R. Co. 175 U. S. 639, 20 Sup. Ct. Rep. 245, 44 L. ed. 305.

“When no question is raised as to the validity of a statute of the United States, but merely as to the application of the statute to the case, no Federal question arises.” Cameron vs. United States, 146 U. S. 533, 36 L. ed. 1077.

CONCLUSION.

As we stated in the beginning of this argument, unless the plaintiff in error has been deprived of some right, title, privilege or immunity under the Interstate Commerce Law or some amendment thereto, on account of the decision of the state court, there is no Federal question involved and there is nothing before this court to review.

From assignment of error number seven it would seem that the plaintiff in error desires this court to find the facts different to the way in which they are found by the state court. In other words, it would seem that from the seventh assignment of error that the plaintiff in error desires this court to find the facts exactly the reverse from what they were found by the state court and so as to show a conflict with the Interstate Commerce Law. The plaintiff in error has had a fair trial by an impartial court; has had its case reviewed by the Supreme Court of Kansas, that court has found, as the trial court did, that the Kansas City Southern Railway Company violated its contract, received more than \$10,000.00 which it was not entitled to receive. The issues in the trial court were found against the garnishee after a full hearing and a fair trial the railroad company failed to prove its defense or to establish sufficient facts to invalidate the contract of Forrester Brothers. We

therefore submit that the writ of error and the appeal in this case should be dismissed or the judgment of the state court affirmed.

Respectfully submitted,
JOHN M. WAYDE,
CARL O. PINGRY,
PHILIP P. CAMPBELL.

Attorneys for Defendant in Error.

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FILED.

MAR 28 1911

JAMES H. McKENN

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—IN THE—

Supreme Court of the United States

OCTOBER TERM, 1911

THE KANSAS CITY SOUTHERN RAILWAY COM-
PANY, *Plaintiff in Error,*

vs.

C. H. ALBERS COMMISSION COMPANY,
Defendant in Error.

No. 1

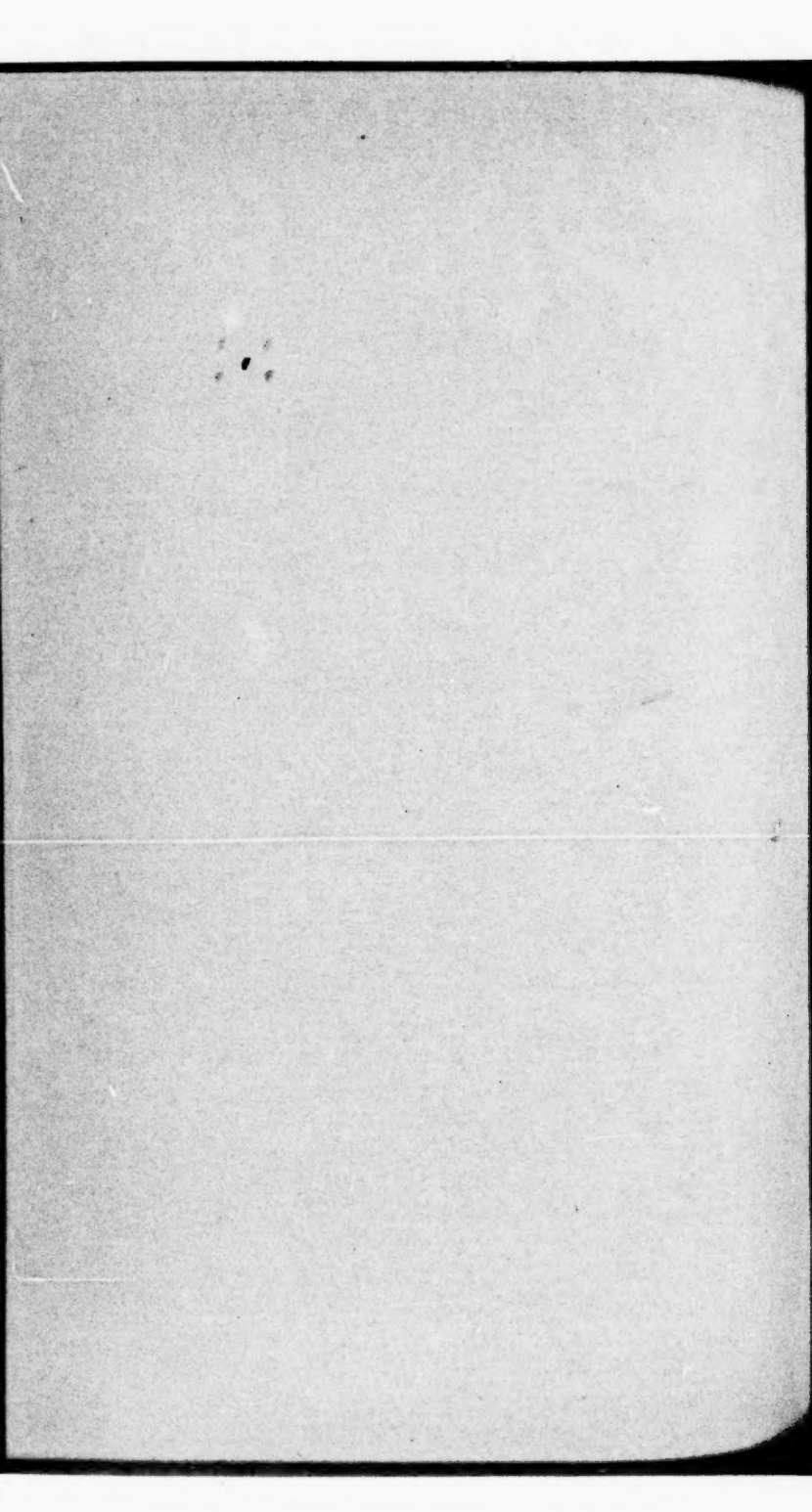
In Error to the Supreme Court of the State of Kansas.

Statement, Specifications of Error and Argument for Plaintiff in Error.

SAMUEL W. MOORE,

CYRUS CRANE,

Solicitors for Plaintiff in Error.



—IN THE—

Supreme Court of the United States

OCTOBER TERM, 1910.

THE KANSAS CITY SOUTHERN RAILWAY COM-
PANY, *Plaintiff in Error,*

vs.

C. H. ALBERS COMMISSION COMPANY,
Defendant in Error.

No. 173

In Error to the Supreme Court of the State of Kansas.

STATEMENT.

This case originated in the District Court of Crawford County, Kansas, where the defendant in error, (hereinafter referred to as the plaintiff) sued, and obtained judgment against Forrester Brothers, the defendants therein, and summoned the plaintiff in error, (hereinafter referred to as the garnishee) on garnishee process. An issue was made between the plaintiff and the garnishee, without pleadings under the Kansas practice, involving the question whether the garnishee was indebted to the defendant. This issue was determined

in favor of the plaintiff in the lower court, and affirmed upon appeal, (79 Kansas 59, 75), to review which this writ of error has been sued out.

Beginning in September, 1901, Forrester Brothers made a number of shipments of grain from Omaha, Nebraska, *via* Kansas City, to Texarkana, Texas, the shipments passing over the line of the garnishee from Kansas City to destination. The shipments in all cases were charged for by the garnishee, and paid by Forrester Brothers, at the published tariff rates. Forrester Brothers afterwards presented a claim for "overcharges", in an amount measured by the difference between the published tariff rate, and a less rate alleged to have been fixed by a private contract. The plaintiff asserts this same claim in this case through the defendants, Forrester Brothers, by virtue of the garnishee process. The garnishee contended in a court below, and contends here, that the plaintiff's claim is based upon a departure from published tariffs, and, for that reason, is for a rebate pure and simple. The court below held that the private contract for less than the published tariff was lawful and enforceable, and rendered judgment accordingly.

A statement of the facts more in detail is as follows: Prior to August and September, 1901, the garnishee and certain other railway companies had in force a legally established proportional rate of ten cents per hundred pounds on corn and oats from Kansas City, St. Joseph, Atchison and Leavenworth to Texarkana, Texas, and common points, applying on those commodities when shipped from other points into Kansas City, St. Joseph, Atchison or Leavenworth and thereafter moved over the line of the garnishee to Texarkana, Texas, and common points. This tariff applied on shipments of corn and oats from Omaha, Nebraska, and Council Bluffs, Iowa, and other common points taking the same rates, to Kansas City and then shipped over the line of the garnishee to Texarkana and common points, (Rec., 112, 116, 138, 139-140, 144).

On November 10th, 1901, this proportional rate on grain from Kansas City, St. Joseph, Atchison and Leavenworth, to Texarkana and common points was increased to fourteen cents. (Rec., 109-112).

There was a legally established local rate of nine cents on grain from Omaha and common points to Kansas City. (Rec., 140). There was also a legally established rate of six and one-half cents between Omaha and common points, and Kansas City, known as the Missouri arbitrary, which applied on shipments originating at Omaha and common points and coming to Kansas City for shipment beyond that point. (Rec., 39, 49, 125, 141).

According to the established schedules a shipment of corn or grain from Omaha, destined to Texarkana via the line of the garnishee, would move from Omaha to Kansas City, taking the Missouri arbitrary of six and one-half cents; and thence over the line of the garnishee, from Kansas City to Texarkana, taking the proportional rate of ten cents or fourteen cents as the case might be, making the total lawful through rate from Omaha and common points to Texarkana and common points, of sixteen and one-half cents per hundred pounds prior to November 10th, 1901, and twenty and one-half cents per hundred pounds after that date. (Rec., 22, 37.)

In August or September, 1901, while the published and established rates were as above stated, Mr. C. V. Fisher, the grain buyer and probably a partner of Forrester Brothers, approached Mr. E. H. Schaufler, of Omaha, the Traffic Manager of three railway companies which were under one common management, and which extended from Omaha to Kansas City, (and for convenience referred to as the northern lines), (Rec., 21), and stated to Mr. Schaufler that his firm could ship a large amount of grain to Texarkana if the freight rates could be so adjusted as to allow them to reach that market on a favorable basis. It was agreed between them that the northern lines would accept a rate of four and one-half

cents per hundred pounds from Omaha to Kansas City. This is the testimony of Mr. Fisher, who made the arrangement. (Rec., 121). Mr. Schaufler, who for prudential reasons gave his evidence under the advice of his personal attorney, made no denial. (Rec., 22).

Mr. Fisher then asked Mr. Schaufler to see the traffic officials of the garnishee and get them to accept a division of eight cents per hundred pounds, as their proportion from Kansas City to Texarkana, which would enable him to reach the Texarkana market from Omaha on a rate of twelve and one-half cents for the entire distance. (Rec., 121, 123). Mr. Schaufler accordingly came from Omaha to Kansas City and saw Mr. Smythe, general freight agent of the garnishee, and it was agreed between them that that line would accept eight cents as its division on this business. (Rec., 24.) Mr. Schaufler then returned to Omaha and prepared a "special freight tariff", (Rec., 153), which was merely a memorandum signed by the northern lines alone, making a rate of sixteen and one-half cents from Omaha and common points to Texarkana and Shreveport, and was expressed to be effective September 1st, 1901, and to expire October 31st, 1901, and contained the notation "Route via Kansas City Southern Railway." This memorandum was never filed with the Interstate Commerce Commission (Rec., 153, 154). The legally established rate from Omaha to Texarkana and Shreveport, as before stated, was sixteen and one-half cents, the same as stated in the memorandum.

At the time in question, the interstate commerce act was not observed in its strictness, and departures from tariff rates were common, according to the testimony of Mr. Catlin (Rec., 83, 84), one of the agents of Forrester Brothers. It is apparent from the form the transaction took, that while the published rate was sixteen and one-half cents, yet the garnishee was to receive eight cents as its proportion for the haul from Kansas City to Texarkana, the northern lines were to receive four and one-half cents for their haul from Omaha

to Kansas City; and the difference between the published rate of sixteen and one-half cents and the cut rate of twelve and one-half cents was to be absorbed in some way by the northern lines.

It was arranged that the shipments should be billed through from Omaha to final destination, and bills of lading were issued accordingly. (Rec., 64). While the shipments were billed from Omaha to Texarkana, yet it was found more convenient to rebill them, upon reaching Kansas City, from Kansas City to destination, and new bills of lading were accordingly issued at that point. (Rec., 62-64). In nearly all of the shipments thus re-billed from Kansas City to destination, the freight was prepaid at Kansas City by the Kaw Grain & Elevator Company, a grain concern at that point which acted as agent for Forrester Brothers. The freight on some few cars was paid at destination by the consignee, but in such cases the amount of freight so paid was refunded to the consignee by the consignor (Rec., 62-64). In every instance the full tariff rate of ten cents per hundred, or fourteen cents per hundred, as the case might be, was charged and collected by the garnishee, and in no case were the freight charges computed or paid on an eight cent basis. (Rec., 65, 66.)

Shipments under this arrangement were begun by Forrester Brothers in September, 1901, and continued for several months thereafter (Rec., 64). The garnishee "protected" the eight cent rate until October 31st, 1901, the date of the expiration of the memorandum tariff (Rec., 98); that is, paid as an overcharge the difference between the agreed division of eight cents and the published rate of ten cents. After October 31st, 1901, the garnishee, as before stated, not only charged and collected the full rate prescribed by its lawfully published tariff, but also declined to pay any further "overcharges." Forrester Brothers presented their claim to the northern lines for overcharges upon all shipments over the line of The Kansas City Southern Railway Company from October 31st, the overcharge being measured by the difference between the

eight cent rate and the tariff rate which was actually paid, and amounting in the aggregate to a large sum. The northern lines in turn transmitted the claims to the garnishee. The latter declined to recognize them, and afterwards this garnishment proceeding was instituted.

At the close of the opening statement of plaintiff's counsel, (Rec., 19), disclosing the nature of the controversy, the garnishee moved to dismiss the proceeding on the ground that the court did not have jurisdiction of the subject matter, but the motion was denied.

At the close of all the evidence, the lower court at the request of the plaintiff gave its conclusions of law substantially, as follows, (Rec., 285):

(a) Joint rates over connecting carriers may be made by private contract and without filing with the Interstate Commerce Commission, provided such rates are just and reasonable and not less than the local rates of one of the participating carriers.

(b) Where two connecting carriers have no legally established joint through rate over their lines, they may by contract make a just and reasonable joint through rate (which shall not be unduly preferential nor less than one of the locals) and a shipper may make a valid contract with such carriers for shipments at such rate and compel them to carry the shipments at the proportional rate agreed upon, and this is true notwithstanding neither such joint rate nor the divisions thereof are filed with the Interstate Commerce Commission.

(c) Where two connecting carriers establish a joint through rate and fix their respective divisions thereof, the division established by each carrier is the lawful rate over its lines, and such rate can only be changed by thirty days notice as the interstate commerce act provides.

(d) The contract between the garnishee and the northern lines, fixing the garnishee's division of the through rate at eight cents per hundred, inured to the benefit of Forrester Brothers, and entitled them to have their grain transported from Kansas City to Texarkana at that rate, notwithstanding the lawfully established

proportional rate in effect on the line of the garnishee between these points was ten cents per hundred.

The lower court, (Rec. 287), refused the request of the garnishee to state its conclusions of law substantially as follows:

(a) The state court was without jurisdiction.

(b) Where an interstate shipment moves over the lines of two connecting carriers which have no lawfully established joint through rate, the only lawful charge is the published tariff rate over the first carrier, plus the published tariff rate over the second carrier, and any contract for a less rate is illegal and non-enforceable.

(c) Even if the contract for a joint rate was in fact made, as claimed by the plaintiff, still neither carrier could lawfully apply such contract rate to plaintiff's shipments until such rate should be filed and published in the manner required by the interstate commerce act.

(d) On interstate shipments the only lawful rates applicable thereto are such rates as have been filed and published as required by the interstate commerce act.

This theory of the case was affirmed by the Supreme Court of Kansas, and the garnishee brings this writ of error to secure a review of the judgment of that court.

SPECIFICATIONS OF ERROR.

I. The Supreme Court of Kansas erred in affirming the action of the lower court in refusing to give the following declaration or conclusion of law requested by garnishee:

1. The court declares the law to be that inasmuch as the claim made by the plaintiff in this case is one arising under and controlled by the act of Congress commonly known as the interstate commerce act, this court is without jurisdiction to determine this cause, and that under the law jurisdiction thereof is vested either with the federal courts, or with the Interstate Commerce Commission.

II. The Supreme Court of Kansas erred in affirming the action of the lower court in refusing to give the following instruction:

2. Where an interstate shipment of merchandise passes from the point of origin to the point of destination over the lines of two separate carriers and such carriers have not by agreement established a joint rate over their said lines and filed and published the same in the manner required by the interstate commerce act, then the only lawful charges for transportation to be applied to such shipment is the published tariff rate of the first carrier from the point of origin of the shipment to the point of connection with the second carrier, plus the published tariff charge of the second carrier from the point of connection with the first carrier to the point of destination. And any contract which the shipper may make with either or both carriers for a rate less than the sum of the rates above mentioned is illegal and non-enforceable.

III. The Supreme Court of Kansas erred in affirming the action of the lower court in refusing to give the following instruction:

3. The court declares the law to be that even if Forrester Bros., through their representatives, made a contract with the northern connecting lines and the Kan-

sas City Southern for a joint rate from Omaha to Texarkana, Texas, Shreveport, La., and other southern points, which said contract price was less than the sum of the published rate of the northern connecting lines from Omaha and of The Kansas City Southern Railway Company from Kansas City to the southern points above mentioned, neither said northern connecting lines nor The Kansas City Southern Railway Company could lawfully apply such contract rate to plaintiff's shipments until the same had been filed and published in the manner required by the interstate commerce act, and if such contract rate was never filed with the Interstate Commerce Commission and published as required by said act, and by such Commission, then such contract rate never became a lawful rate, nor could the same be lawfully applied to Forrester Bros. shipments described in the evidence in this case.

IV. The Supreme Court of Kansas erred in affirming the action of the lower court in refusing to give the following instruction:

4. The court declares the law to be that on interstate shipments of merchandise, the only lawful rates applicable thereon are such rates as have been filed and published in the manner required by the interstate commerce act.

V. The Supreme Court of Kansas erred in holding that the garnishee had no rate from Kansas City, Missouri, to Texarkana, Texas, and common points, which applied to freight shipped over the lines known as the northern lines, whereas the record shows that garnishee had duly filed and published its proportional rate on grain from Kansas City to Texarkana and common points, and that this rate applied on grain shipped over the lines known as the northern lines originating at Omaha, Nebraska, and common points.

VI. The Supreme Court of Kansas erred in holding that on October 31, 1901, the garnishee in connection with the Chicago Great Western Railway Company and other

lines, established a joint rate for shipment of grain originating at St. Joseph, Atchison and Leavenworth and other common points, (which do not include Omaha, Nebraska, and Council Bluffs, Iowa) to Texarkana and Shreveport and other points, in which the garnishee was to receive 10c per 100 lbs. of the joint rate, whereas the record shows that such rates were not *joint* rates, but *proportional* rates, applying on all grain which originated at a distance from Kansas City, and applied to the shipments in controversy.

VII. The Supreme Court of Kansas erred in holding that the garnishee could legally make a contract for a rate on grain originating at Omaha, Nebraska, and common points and shipped to Kansas City, Missouri, over the lines of another railroad company, and then transported by the garnishee to Texarkana, Texas, which was less than its proportional rate applying on such shipments, which had been duly filed with the Interstate Commerce Commission and published as required by law, and in refusing to hold that a contract to that effect was null and void and of no force and effect whatever.

VIII. The Supreme Court of Kansas erred in holding and finding that the garnishee could, on interstate shipments of grain, make with the shippers, to-wit: Forrester Bros., a contract for a rate on grain originating at Omaha, Neb., and shipped to Kansas City, Mo., over the lines of another railroad company, and thence south over the lines of the garnishee which was less in amount than the legally published proportional rate, which, under the law and under the contract of transportation business, applied on the shipments in controversy.

IX. The Supreme Court of Kansas erred in refusing to hold that on interstate shipments passing over separate and distinct lines of railway where no joint rate has legally

been established by such roads, no contract could be made for through transportation over such roads at a sum less than the legally published proportional or local rates of such railroad companies.

X. The Supreme Court of Kansas erred in holding that the alleged contract for a rate on interstate shipments of grain, to-wit: from Kansas City, Mo. to Texarkana, Tex., over the line of the garnishee was enforceable after the garnishee had filed with the Interstate Commerce Commission and published, as required by law, its tariff raising the proportional rate on grain shipments from Kansas City, Mo., to Texarkana, Texas, and common points, to an amount greater than that claimed in the alleged contract, and in refusing to hold that upon the increase of said rate by such published tariff, the alleged contract became void and non-enforcible and of no effect.

XI. The Supreme Court of Kansas erred in refusing to hold that the claim sued for in this action was for rebates, that is to say for rates of transportation on interstate shipments which were less than the legally filed and published tariffs of the garnishee on grain shipments between said points and was therefore illegal, void and non-enforcible.

ARGUMENT.

I.

The case is properly here for review. The plaintiff's motion to dismiss or affirm should be overruled.

The garnishee claimed a construction of the interstate commerce act which, if allowed, would necessarily lead to a judgment in its favor. This claim was asserted:

(a) By a motion to dismiss the proceeding, at the close of the opening statements, upon the ground that, under the interstate commerce act, the court had no jurisdiction of the case, in advance of some action thereon by the Interstate Commerce Commission. (Rec. 19).

(b) By the presentation of a demurrer at the close of the plaintiff's testimony on the ground that on plaintiff's own testimony it was not entitled to recover against the garnishee. (Rec. 108).

(c) By an objection to the conclusions of law given by the court on behalf of the plaintiff, each of which denied to the garnishee rights claimed by it under the interstate commerce act, (Rec. 286), and

(d) By its requests for conclusions of law in its own behalf, declaring its rights under the interstate commerce act, each of which the court refused to give (Rec. 286).

The garnishee claimed a right, privilege or immunity under a specific statute of the United States. The decision of the state court was against this claim. The garnishee, therefore, is entitled to a review of the rulings of the state court in that behalf.

The insistence of the garnishee, from the beginning to the end of the proceedings in the state courts, was that it had complied with a statute of the United States, known as the

interstate commerce act, in filing its published tariffs covering the transportation of the property in question over its line of railroad, and had charged and collected the published rate, and that, therefore, it could not be required to pay, as an overcharge, the difference between the rates so established and an alleged private contract rate. If its contentions in this respect were correct, there could of course be no recovery.

The rule in the matter under consideration is thus stated in *St. L. I. M. & S. Ry. Co. v. Taylor*, 210 U. S., 281:

Where a party to a litigation in a state court insists, by way of objection to or requests for instructions, upon a construction of a statute of the United States which will lead, or, on possible findings of fact from the evidence may lead, to a judgment in his favor, and his claim in this respect, being duly set up, is denied by the highest court of the state, then the question thus raised may be reviewed in this court. The plain reason is that, in all such cases, he has claimed in the state court a right or immunity under a law of the United States and it has been denied to him.

The defendant, now plaintiff in error, objected to an erroneous construction of the safety appliance act, which warranted on the evidence a judgment against it, and insisted upon a correct construction of the act, which warranted on the evidence a judgment in its favor. The denials of its claims were decisions of Federal questions reviewable here.

It is objected by the plaintiff that the action of the state court, in giving and refusing conclusions of law, was immaterial for the reason that the trial was to the court and that there was no jury to be guided thereby; but it is the duty of the lower court, in actions tried to it without a jury, to state its conclusions of law in order that they may be reviewed by an appellate court.

Section 5891—General Statutes of Kansas, 1909, is as follows:

Upon the trial of questions of fact by the court, it shall not be necessary for the court to state its finding,

except generally, for the plaintiff or defendant, unless one of the parties request it, in which case the court shall state, in writing, the conclusions of fact found, separately from the *conclusions of law*.

Not only did the garnishee by its request for declarations or conclusions of law on its part, and by its objection to the declarations or conclusions of law given on behalf of the plaintiff, assert a right and immunity under the statutes of the United States, but it is apparent from the opening statements of counsel, (Rec. 12-19), that the main contention of the garnishee was that it was not liable because it had complied with the interstate commerce act. Furthermore, an examination of the opinion of the Supreme Court of the State of Kansas, which may be looked into, (*State of Montana v. Rice*, 204 U. S., 291), shows that the main controversy centered around the construction and application of the provisions of the interstate commerce act requiring the publication of both local and joint rates, and the exaction of charges in compliance therewith. It is difficult to conceive in what manner the garnishee could have been more vigilant in the assertion of the rights which it claimed under the interstate commerce act.

In *Nutt v. Knut*, 200 U. S., 12, it is said:

A party who insists that judgment cannot be rendered against him consistently with the statutes of the United States may be fairly held, within the meaning of Section 709, to assert a right and immunity under such statutes, although the statutes may not give the party himself a personal or affirmative right that could be enforced by direct suit against his adversary. Such has been the view taken in many cases where the authority of this court to review the final judgment of the state courts was involved.

It is objected by the plaintiff that in the assignments of error filed by the garnishee, no specific section of the interstate commerce act is referred to. This was unnecessary. The rule as to the inflexibility of schedules of rates filed as required by law, and of the strict adherence thereto, flows from

the act as a whole, as it existed at the time of the transactions in controversy, and is not the result of a construction of any particular section. Furthermore, the precise matter in controversy in this court was considered by both of the state courts, and was not only specifically passed on by both courts, but constituted the chief matter of difference between the parties.

It is furthermore objected by the plaintiff that the findings of fact made by the state court are conclusive upon this court and that they are of such a nature that no Federal question is presented.

In the first place, the duly published tariff carrying proportional rate under which the shipments in controversy were carried is a matter of record, by stipulation of the parties; and it is our contention that the existence of this tariff is conclusive in this court upon the rights of the parties.

The Supreme Court of Kansas in its decision upon motion for rehearing, (Rec., 305), expressly finds that this proportional rate was in effect, having been duly published and established as required by law. This fact alone is sufficient for the purposes of this writ of error.

Furthermore it is submitted that even if the findings of fact made by the state court were against the garnishee, (which is not the case here), either as to the existence or the application of the proportional tariff, this court would not be bound thereby. The right claimed by the garnishee under the Federal statute to determine which this writ of error has been allowed, is dependent upon the *existence* and the *application* of the tariffs filed pursuant to law. This right cannot be defeated by a finding of fact by the state court, either against the existence of the tariff or that it did not apply to the shipments in question. This court, it is submitted, has the right to exercise its own judgment, as to whether a tariff was lawfully filed fixing rates controlling all shipments, and whether such rates applied to and controlled the charges upon the particular shipments.

The case is analogous to the claim, frequently asserted in this court, that subsequent state legislation has impaired the obligation of a contract. In such cases the well-established rule is that this court will determine for itself whether there is a contract, valid and binding, between the parties, and whether its obligation has been impaired by the legislative action of the state.

Nor. Pac. Ry. Co. v. Minnesota, 208 U. S., 583;
Chicago, Burlington & Quincy Ry. Co. v. Nebraska,
 170 U. S., 57;
Stearn v. Minnesota, 179 U. S., 223;
Mobile and Ohio Ry. Co. v. Tennessee, 153 U. S.,
 486.

The same rule is applied by this court in actions to enforce a judgment rendered in a foreign state, where it is insisted that for various reasons it is not entitled to full faith and credit in the state where suit is instituted. This court, on writ of error, may determine for itself the nature of the original liability upon which the judgment was rendered. In such a case this court in *Huntington v. Attrill*, 146 U. S., 657, says:

The case, in this regard, is analogous to one arising under the clause of the constitution which forbids a state to pass any law impairing the obligation of contracts, in which, if the highest court of a state decides nothing but the original construction and obligation of a contract, this court has no jurisdiction to review its decision; but if the state court gives effect to a subsequent law, which is impugned as impairing the obligation of a contract, this court has power, in order to determine whether any contract has been impaired, to decide for itself what the true construction of the contract is, *New Orleans Water-works Co. v. Louisiana Sugar Ref. Co.*, 125 U. S., 18, 38 (31:607. 614). So if the state court, in an action to enforce the original liability under the law of another state, passes upon the nature of that liability and nothing else, this court cannot review its decision, but if the state court declines to give full faith and credit to a judgment of another state, because of its opinion as to the nature of the

cause of action on which the judgment was recovered, this court, in determining whether full faith and credit have been given to that judgment, must decide for itself the nature of the original liability.

The judicial power of the United States extends to all cases in law and equity arising under the constitution and laws of the United States (Const. art. 3, sec. 2), and the right of review in this court is guaranteed to every citizen where, in any state court, he claims a right or immunity under the constitution or under the laws of the United States. It is respectfully submitted that this right of review cannot be taken away or impaired by any finding of facts made by the state court which in its essence denies the existence of the right asserted. Otherwise the state court might, for illustration, find that a lawfully published interstate tariff duly introduced in evidence was a local tariff when, in fact, it was a proportional tariff, or *vice versa*, and that consequently by reason of such erroneous finding the tariff was not applicable to the shipments in question. The right of a plaintiff in error to a review in this court will amount to little or nothing, unless this court possesses the power to take the tariffs which have been introduced in evidence and determine for itself their construction and their application to the movements of traffic which form the basis of the controversy. Neither the findings nor the rulings of the state court in these matters should be permitted to prevent the determination of the right asserted under the constitution and laws of the United States (*St. Louis Ry. Co. v. Arkansas*, 217 U. S., 136).

It is respectfully submitted, therefore, that the case is properly here for review and that the plaintiff's motion to dismiss is without merit.

The State Court was without jurisdiction of this cause.

The lawfully established tariff rates applying on the shipments in question over the line of the garnishee were charged and collected in all cases.

Plaintiff's claim depends upon a departure from the published rates. It is immaterial whether the claim be that the established rate is unreasonable and should be departed from for that reason, or that there was a special contract for less than the established rate; in either event, redress must be sought through the Interstate Commerce Commission, and cannot be obtained by an action in the state court in the first instance. The reason is that a departure from the published rate which might be accomplished in favor of some individual plaintiff, by the action of a court or jury, would work the same discrimination which it is the purpose of the interstate commerce act to prevent. Plaintiff would by the sanction of the court pay less than the published rate, whereas the public generally would pay the full rate. The inflexibility of published rates must be maintained in every court until the Commission shall, by its order, level the rate for the benefit of everyone.

Texas Ry. Co. v. Abilene, 204 U. S., 426;
Mo. Ry. Co. v. Milling Co., 80 Kans., 141;
Coal Co. v. Lumber Co., 159 Federal, 278;
Van Patten v. Railroad, 81 Federal, 545;
State v. Railway Co., 176 Mo., 687;
Carlisle v. Railway Company, 168 Mo., 652;
Morrisdale Coal Co. v. Pennsylvania R. Co., 183
Fed., 929.

III.

The plaintiff's entire claim is illegal and non-enforceable for the reason that it is based upon an arrangement whereby the carrier was to serve Forrester Bros. for less than the established rate.

1. *The lawful rate applicable to the shipments in question.* It is conclusively established that there was a proportional rate on grain and grain products in carload lots applying from Kansas City and St. Joseph, Missouri, Atchison and Leavenworth, Kansas, and points taking the same rates, to Texarkana, Shreveport, and common points, of ten cents per hundred (Rec. 116), afterwards advanced to fourteen cents (Rec. 112).

The Supreme Court of Kansas in its opinion on rehearing (Rec. 305) says:

The rate which The Kansas City Southern road had from Kansas City south to Texarkana and other points in connection with the lines from Atchison, St. Joseph and Leavenworth and other common points was a proportional rate, instead of a joint rate as stated in the opinion. This proportional rate was regularly established under the provisions of the interstate commerce law.

Kansas City, St. Joseph, Atchison and Leavenworth are common points with Kansas City and take the same rate to Texarkana, Shreveport and common points. Omaha is not a common point with any of these cities (Rec. 119, 139, 140).

There was also the legally established rate of six and one-half cents between Omaha and common points, and Kansas City and common points, known as the Missouri arbitrary, which applied on shipments originating at Omaha and common points, and coming to Kansas City for shipment beyond (Rec. 39, 49, 125, 141). There was no joint through rate in effect applicable from Omaha to Texarkana. Shipments between those points (Omaha and Texarkana), under the then existing tariffs, would take a combination through

rate composed of the aggregate of the Missouri arbitrary of six and one-half cents and the proportional rate of ten cents (or fourteen cents, as the case might be), over the line of the garnishee.

2. *The proportional rate applicable over the line of the garnishee.* The practice of making combination through rates in this manner is practically universal. In tariff supplement 17-A of the Interstate Commerce Commission, approved June 28th, 1909, it is said in rule 5:

(a) The practice on the part of carriers of accepting and transporting through shipments, as to which no joint rate applies, upon rates made up by a combination of the rates of the several carriers participating in the movement, and of collecting, as delivering carriers, the aggregate charges of the several carriers upon such shipments, and of accounting to such carriers for their several portions of such charges, is practically universal. That custom has the same binding effect as a joint rate, both as between the carriers themselves and as between carriers and shippers. Therefore carriers may apply to through shipments, rates to and from points to and from which there is no applicable published joint rate by using lawfully published bases, locals or *proportionals*, in connection with other lawfully published tariffs.

(b) Tariffs containing basing or *proportional* rates must specify clearly the extent and manner of their use, and tariffs that are especially intended for use in connection with published basing rates must show the I. C. C. numbers of tariffs in which bases can be found.

The proportional rate established by the tariffs, at pages 111, 112 and 116 of the record, was a rate applicable on shipments originating outside of Kansas City, St. Joseph, Atchison or Leavenworth and moving, via one of those points, to Texarkana, Shreveport and other points of destination named in the tariff, (Rec. 118, 119, 142, 144). No other published rate was applicable over the line of the garnishee on shipments originating at Omaha and moving to these points

of destination; the application of any other rate would have constituted a violation of the act.

As there was some confusion of thought, in the state court, over the meaning and application of this proportional rate, reference will be made to some rulings upon the subject.

In *Bascom Co. v. Railway Co.*, 17 I. C. C., Rep. 356, a proportional rate is defined as follows:

A proportional rate is nothing more or less than a separately established rate, as that phrase is used in section 6 of the amended act, applicable to through transportation. And it has not been understood either by the Commission, or by others so far as we are informed, that a separately established rate can be other than an open rate available to all. The separately established or proportional rate is simply one way of making up the through charges between two points; but while we have made no criticism and, as at present advised, see no grounds for any criticism of proportional rates applicable only to through movements from a defined territory or group of points, we have never recognized as valid and, as at present advised, see no grounds upon which we could recognize as valid a proportional rate limited to shipments that come into the proportional rate point over the lines of a particular carrier. Proportional rates limited to through movements from defined territory, or from a group of points, seem to form a proper basis for making of through charges for transportation from those points and that territory.

A clear explanation of proportional rates is given by the Commission in "The Matter of Form and Contents of Rate Schedules," 4 I. C. C., Rep. 701, as follows:

The employment of proportional tariffs appears to be very extensive, and they are applied to a large percentage of interstate business. Such tariffs establish rates of carriage which are lower between given points when the traffic has undergone transportation before reaching the first point, or is to be further transported after reaching the second, than the rates charged on like traffic which originates at one of such points and term-

inates at the other. The rates from New York to Chicago, subject to the Official Classification, may be cited as an illustration, viz:

	Classes.					
	In Cents Per 100 Lbs.					
	1	2	3	4	5	6
Regular Rates	75	65	50	35	30	25
Proportional Rates	70	61	47	33	29	24

The higher rate is charged on shipments destined to Chicago, the lower proportional rate is accepted for the carriage between those cities when the shipments are consigned to points beyond Chicago. Traffic from the Atlantic seaboard to various Mississippi River crossings is also governed, to a very great extent, by a similar system of charges. The Eastern Lines have not been accustomed to publish rates to points west of the Mississippi; on such business, they advertise and accept the lower rate for hauling to the river than they exact on shipments terminating at river points. A somewhat different but quite frequent use of proportional methods is described by the following illustration: One railway between Chicago and Kansas City, for instance, has a line of its own west of the Missouri River reaching into corn producing region of Kansas. Another railway from Chicago terminates at Kansas City, it desires to participate in the grain traffic originating in the same corn belt west of the Missouri. The first named road, extending through to Chicago, naturally desires to route by its own rails the traffic shipped to that market; and, being able to make through rates over its own line, refuses to join in rates from Kansas points to Chicago via its line to the river and thence via the line of its competitor. The latter, however, by means of low proportional tariff from Kansas City can allow the former its full local rates to that point, and still compete for the business by making through rates to Chicago equally low with those made by the road having its own through line.

Various reasons are assigned by the railroads for resorting to this method of establishing rates. The use of proportional tariffs, it is claimed, furnishes a basis for arriving at the total through rates for a large section of country, when it is impracticable to publish such rates in full by reason of the great number of roads and

routes which are or may be employed in effecting the transportation. It is also asserted that cases not unfrequently arise where one carrier will refuse to unite with other carriers, whose lines are physically connected with its own, in forming through routes and publishing joint rates for through traffic. Under these circumstances the proportional plan is alleged to be necessary in order that the carrier which is unable to secure any such agreement, may nevertheless make the same through rates as are offered by competing lines. It is likewise generally urged that proportional tariffs are beneficial to the public, because they supply the advantages of through routes and through rates to many localities which could obtain them in no other way.

In Moore on Interstate Commerce, Section 48, it is said:

Proportional tariffs establish rates of carriage which are lower between given points when the traffic has undergone transportation before reaching the first point, or is to be further transported after reaching the second, than the rates charged on like traffic which originates at one of such points and terminates at the other. A proportional rate means a part of or a remainder of the through rate or it means nothing at all. A through rate may be said to be any rate covering the transportation through from the point of shipment to destination, and may be either a joint through rate established by agreement of all the members of the through line, or a combination through rate, made up, without express agreement, of the duly published and otherwise "legally established" several rates of each member "upon its own route." There is no prohibition in the law, express or implied, of such combination through rates. A carrier which has published and filed its rates as the law requires may combine such rates with the lawfully established rates of a connecting carrier or carriers, and thus announce the aggregate amount for which traffic will be transported from points on its railroad to points on the line of such connecting carrier or carriers.

In Barnes on Interstate Transportation, Section 80-D,² it is said:

A proportional rate is a proportion of a through rate which is lower between given points when the traffic has undergone transportation before reaching the first point, or is to be further transported after reaching the second, than the rates charged on like traffic which originates at one of such points and terminates at the other. It is a part of, or a remainder of the through rate.

Proportional rates are also recognized as proper in *Serry v. Southern Pacific Ry. Co.*, 18 I. C. C., Rep. 556; *North Brothers v. Railway Company*, 13 I. C. C. Rep., 153; *Kansas City Transportation Bureau v. Railway Company*, 16 I. C. C. Rep., 195; *Lindsay Brothers v. R. R. Co.*, 16 I. C. C. Rep., 6, and *In re Through Routes and Through Rates*, 12 I. C. C. Rep., 164, 172.

In the *Armour Packing Company* case, 153 Fed. Rep., 1, S. C., 209, U. S., 56, *Interstate Commerce Commission v. Railway Company*, 30 Sup. Ct. Rep., 651, and *Chicago, B. & Q. Ry. Co. v. United States*, 157 Fed. Rep., 830, the rates under consideration were proportional rates and no question was made of their validity or application.

Forrester Brothers knew and recognized the proportional rate applying between Kansas City and Texarkana over the line of the garnishee. Its agent, who was a rate expert (Rec., 70, 71), prepaid the freight at Kansas City, and in all cases paid the published proportional rate of ten cents or fourteen cents, as the case might be.

As before stated, the movement from Omaha to Texarkana was governed first, by the Missouri arbitrary of six and one-half cents, plus the proportional rate over the line of the garnishee. The existence of the Missouri arbitrary was established by oral testimony without contradiction. The existence of the proportional rate was established by the tariff itself, which it was admitted had been duly filed with the commission. The presumption, in the absence of proof, would be that rates between these points had been duly and

legally established. (*Meeker v. R. R.*, 162 Fed., 354; *Texas & Pacific v. Abilene Co.*, 204 U. S., 426; *Interstate Commerce Commission v. Railway Company*, 209 U. S., 108, 121; *Clement v. Railway Company*, 153 Fed. Rep., 979; *American Union Coal Co. v. Railway Company*, 159 Fed. Rep., 278). We are not concerned, however, particularly with the rate at which the shipments moved from Omaha to Kansas City over the northern lines. It is sufficient that the movement from Kansas City south over the line of the garnishee was, and necessarily must have been, under the garnishee's duly established proportional rate.

3. *The law applicable to the case.* Section 6 of the interstate commerce act, as amended by the act of March 2nd, 1889, in force at the time of the shipments in question, required carriers to print and keep open to public inspection schedules showing the rates, fares and charges for transportation of passengers and property which the carrier had established and which were in force at the time upon its route. It also required carriers to file with the Commission its own schedule of rates and charges as well as schedules of joint rates and charges.

Paragraph 5 of said amended section is as follows:

And when any such common carrier shall have established and published its rates, fares and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of passengers or property or for any service in connection therewith than is specified in such published schedule of rates, fares and charges as may at the time be in force.

Section 2 of the act as it then stood provides:

That if any common carrier subject to the provisions of this act, shall, directly or indirectly, by any special rate, rebate, draw-back or other device, charge, demand, collect or receive from any person or persons, a greater or less compensation for any service rendered

or to be rendered in the transportation of passengers or property subject to the provisions of this act than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

The garnishee, therefore, was obliged to apply its lawfully established proportional rate to the shipments in question. They moved into Kansas City from Omaha over the northern lines. The court will take judicial notice of the location of these lines of railroad. If they had moved from Omaha to St. Joseph, Atchison or Leavenworth for transportation to Texarkana via Kansas City and had come to Kansas City over the lines of either the Chicago Great Western, Kansas City, St. Joseph & Council Bluffs, Missouri Pacific, or St. Joseph & Grand Island, and thence to Texarkana over the line of the garnishee, the proportional rate shown in the tariff at page 116 of the record would have applied from either St. Joseph, Atchison or Leavenworth to destination, the same as it applied from Kansas City to destination.

This proportional rate was as fixed and inflexible, by reason of its being established in accordance with law, as though it had been fixed by an act of Congress. No contract or other device could vary or depart from it. Any contract undertaking to vary from the published rate would be void. This is conclusively established by the following decisions of this court:

Gulf, Colorado & S. F. Ry. Co. v. Hefley, 158 U. S., 98;

Texas & Pac. R. R. Co. v. Mugg, 202 U. S., 242;

Armour Packing Co. v. U. S., 209 U. S., 256;

Other decisions are to the same effect:

- Hazelley v. Coal Company*, 48 Kans., 593;
Railroad Co. v. Hubbell, 54 Kans., 232;
Kiser v. Railway Co., 66 Ark., 348;
Armour Packing Co. v. United States, 153 Fed., 1;
Railway Co. v. Standard Lumber Co., 174 Fed., 107;
Railroad Co. v. Harrison, 119 Ala., 539;
Railroad Co. v. Ostrander, 66 Ark., 567;
Bullard v. Railroad Co., 10 Mont., 168;
Railroad Co. v. Swanson, 102 Ga., 754;
Southern Wire Co. v. Railway Co., 38 Mo. App., 191;
Messenger v. Railway Co., 36 N. J. Law, 407;
Scofield v. Railway Co., 43 Ohio St., 571;
Fitzgerald v. Railway Co., 63 Vt., 169;
Railway Co. v. Burdick, 94 Ga., 775;
Railroad Co. v. Erwin, 118 Ill., 250;
Railway Co. v. Bowles, 1 Ind. Ter., 250;
Gerber v. Railway Co., 63 Mo. App., 145;
Railway Co. v. Holmes, 18 Okla., 92;
Railway Co. v. Stoner, 5 Tex. Civ. App., 50;
Railway Co. v. Clements, (Tex. Civ. App.) 49 S. W., 913;
Railway Co. v. Wilcox, 99 Va., 394;
Railway Co. v. Creety, 5 Ga. App., 424.

4. *The ruling of the State Court was erroneous.* The lower court erroneously took the position, as evidenced by its declaration of law number 5, (Rec. 285) that where two railway companies have no joint through rate published as the law requires, they may make a joint through rate by private contract, agreeing among themselves upon the divisions thereof, *without filing with the Commission a schedule showing the rate*, and that a shipper not only may avail himself of this unpublished rate, but of the divisions thereof, and may require each of the railway companies to

handle his shipments, upon tender of its proportion or division of such unpublished rate.

This error was further emphasized by the refusal of the court to give the second declaration of law requested by the garnishee, (Rec. 287), which properly declared the law to be that where a shipment passes from point of origin to point of destination over the lines of two separate carriers and such carriers have not by agreement a joint through rate published as the law requires, then the only lawful charge for transportation to be applied to such shipment is the published tariff rate of the first carrier from the point of origin of the shipment to the point of connection with the second carrier, plus the published tariff charge of the second carrier from the point of connection with the first carrier to the point of destination.

The precise question was determined against the view entertained by the state court, and in favor of the contention of the garnishee by the circuit court of appeals of the eighth circuit in *Chicago, Burlington & Quincy Railway Company v. United States*, 157 Fed., 830, where the court said:

It is true that there is no averment in the indictment of a through joint rate from Kansas City to New York. Indeed, the inference from the language used is that there was no such rate, and that what was claimed by the government to be the lawful through rate was a combination of the rates that had been established over the component sections of the entire route. It is not essential to the commission of the offense of giving a concession from a through rate over connecting lines of railroad that the rate be a joint one established by all of the carriers and published and filed with the commission. If an initial carrier accepts traffic for transportation and issues its bill of lading over a route made up of connecting roads for which no joint through rate has been published and filed with the commission, the lawful rate to be charged is the sum of the established local rates published and filed by the individual roads; or if, as was the case here, there is a local rate over one road and a

joint rate over the others for the remainder of the route, all published and filed with the commission, the lawful through rate to be charged is the sum of the local and joint rates. By failing to establish or concur in a joint through rate for traffic accepted for interstate transportation, each participating carrier impliedly asserts that the rate which it has duly established, published, and filed for its own line shall be a component part of the through rate to be charged. It is competent for carriers, if conditions justify it, to make their proportions of a through rate less than the local charges upon their own lines, but in doing so they should observe legal methods, and if no action to that end is taken they in effect adhere to the rates established, published, and filed by them as applying not only to local but to through traffic. The initial carrier which receives traffic and issues a bill of lading to ultimate destination should be held to have done so in view of the only rates which its connections are authorized by law to charge. This principle was recognized by the commission as early as March 23, 1889 (2 Interst. Com. Com's., R. 656), when it said:

"When no other tariff is filed, the rates on traffic carried over or upon more than one line will be the sum of the local rates of the individual roads, or of local and joint rates, as the case may be."

By routing and billing the traffic over the connecting lines the initial carrier adopts and is bound by their lawful rates. In the concert of action, in the successive receipt and movement of the traffic by the connecting carriers under through bills of lading for continuous carriage, is manifested the "common arrangement" contemplated by the act of Congress. No previous formal contract is necessary to bring the carriers under the provisions of the law. Thus, in *Cincinnati, etc., Railway v. Interstate Commerce Commission*, 162 U. S., 184; 16 Sup. Ct., 700, 40 L. Ed., 935, it was held that the arrangement constituting participation by a local carrier in interstate commerce is effected by its receipt and transportation of interstate traffic under through bills of lading. In *United States v. Wood* (D. C.), 145 Fed., 405, there were shipments of iron pipe under through bills of lading from points in Pennsylvania and New Jersey

to Winnipeg, Canada. The route was over the Philadelphia & Reading and Baltimore & Ohio Railroads from the points of origin to the Great Lakes, thence by water carrier to Duluth, Minn., and thence by the Great Northern Railroad and its connections to destination. No through joint rate had been published or filed for the entire route, but there had been published and filed by the first two railroads and the water carrier a joint rate from the initial points to Duluth, and by the Great Northern and its connections a joint rate from Duluth to Winnipeg. It was held that the lawful through rate was the sum of the two joint rates, and that each carrier which accepted and transported the traffic under through bills of lading at a thorough rate participated therein and was bound thereby. The doctrine was reasserted by the same court in *United States v. Camden Iron Works*, (C. C.), 150 Fed., 214.

The decision in *Armour Packing Company v. United States*, 209 U. S., 256 and 153 Fed., 1, appears to be conclusive against the theory adopted by the state court in this case. There the packing companies were convicted of a departure from an established proportional rate. The various connecting carriers had established a proportional rate of 23 cents between the Mississippi River and New York City. While this rate was in force, the packers and the railway companies entered into a time contract for the transportation of packing-house products at an agreed rate, in which this proportional rate was computed at twenty-three cents. Thereafter the proportional rate was advanced to thirty-five cents, but the shipments continued to move under the contract as before, the proportional rate between the Mississippi River and New York City being still computed at twenty-three cents. In the specific instance passed upon, the packing company made a contract for a through joint rate from Kansas City, Kansas, to Christiania, Norway, of 52.93 cents per hundred divided as follows: 19.93 cents ocean transportation; twenty-three cents, the proportional from the Mississippi River to New York City; and ten cents from Kansas City, Kansas, to the Mississippi River.

If the theory of the state court were correct, it would necessarily follow that the packing companies committed no violation of the law, since there was no published joint through rate, and they, therefore, had the lawful right to make a joint through rate by private contract. But this court, after the most careful consideration, reached the conclusion that when the proportional rate from the Mississippi River to New York City was advanced from twenty-three cents to thirty-five cents per hundred, the latter was the only lawful rate applicable to the shipment, and the acceptance by the railway companies of twenty-three cents instead of thirty-five cents amounted to an unlawful rebate of twelve cents per hundred.

The lower court, however, found that there was no published joint through rate from Omaha to Texarkana, and it reached the conclusion, according to the view of the law, as expressed in its conclusions of law both given and refused, that the northern lines and the garnishee could make a private contract fixing a joint through rate, agreeing upon the divisions thereof, and that Forrester Brothers could not only avail themselves of this unpublished secret through rate, but they could also avail themselves of the division thereof which the garnishee was to receive, and which was less than the open published rate available to all shippers alike.

The court, therefore, found, (Rec. 298):

That the contract between the northern lines and the garnishee, in which the garnishee agreed to accept eight cents per 100 lbs. as its proportion of the joint through rate on corn and oats from Omaha, Nebraska, to Texarkana, Texas, and Shreveport, Louisiana, was a good and valid contract between the railroad companies and Forrester Brothers, and Forrester Brothers were entitled to have their grain hauled from Kansas City, Missouri, over The Kansas City Southern Railway Company's railroad to Texarkana, Texas, and Shreveport, Louisiana, at the rate of eight cents per 100 lbs.

There is no pretense that this joint rate was ever published as required by law. In fact, the Supreme Court of Kansas says, (Rec., 296):

The joint rate given to Forrester Brothers was not reported to the Interstate Commerce Commission and published as required by law, and therefore did not become an established legal rate.

The interstate commerce act, as amended by the act of March 2nd, 1889 (25 Statutes at Large, 856), required joint, as well as local rates, to be filed with the Commission:

And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also in like manner be filed with said commission.

It is also provided, page 857:

It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the commission in force at the time.

The whole scope and purpose of the interstate commerce act, as has been many times stated by this and other courts, is to prevent discrimination and to secure uniformity in rates and charges by strict adherence to tariffs filed and published as the law requires. The rule applies equally to the filing and publishing of joint rates of two or more carriers as well as to the local rates of a single carrier. The prohibitions of this act are leveled against every form of secret rate, whether joint or local.

The construction placed upon the act by the state court in this case is in direct conflict not only with the letter but

also with the spirit of the law. The private contract which Forrester Brothers made through their agent Fisher, with Schaufler and with the freight agent of the garnishee, for a rate of four and one-half cents on the northern lines and a rate of eight cents over the line of the garnishee, was wholly ineffective to modify or alter the published tariffs which must necessarily govern the movement. Even if this secret joint rate had been published, it would not have given the plaintiff any right to avail itself of the garnishee's division of the through rate, since as to a shipper a joint rate is an undivisible unit, and the divisions of the through rate agreed upon by the interested carriers are a matter of contract among themselves, with which a shipper has no concern.

The Supreme Court of Kansas in its opinion states that there were no legally established local rates "which were in conflict with the rate made for Forrester Brothers or which would in any manner affect the validity of the last named rate, (Rec. 301). * * * No local rate had been established by either road on the route covered by this (joint) rate." It is not clear what the court means by this statement. It is true that the Missouri arbitrary applying between Omaha and Kansas City upon shipments going beyond was not, strictly speaking, a local rate. Nor was the proportional rate from Kansas City and cities taking the same rate, to Texarkana and common points a local rate, strictly speaking; but they were both legally established rates applicable to the shipments in question and the only rates on which such shipments could lawfully be handled. Certainly their existence did not authorize the interested lines to make a secret joint rate.

The theory upon which this case was decided in the state courts, if permitted to prevail, would thoroughly and entirely overturn the interstate commerce law and all the decisions that have been made under it. Nothing can be conceived which would more effectually nullify its provisions. All of the railroad companies in the United States could establish their local rates in the manner provided by law, and

then make such secret joint rates as they might choose, or as they might be able to agree upon with their shippers, and the shipments moving upon such secret joint rates would be free from the control of the law. A secret joint rate could be made for each shipper, as was done before there was any regulation of railroad rates by public authority. It is, of course, impossible that such an interpretation of the law can obtain at this late day.

5. *A shipper is not entitled to avail himself of a division of a through rate.* Plaintiff's theory, in which he was supported by the state court, was that the northern lines and the garnishee, by agreement among themselves, established a joint rate of sixteen and one-half cents from Omaha to Texarkana, of which the garnishee was to receive a division of eight cents, and that this fact gave to the plaintiff the right to make shipments from Kansas City to Texarkana upon the eight cent division. While this feature is not controlling in this case, and may not be of great importance, yet the error of the state court in this respect ought not to be permitted to pass without challenge.

As to a shipper a joint rate is an indivisible unit. The divisions of the joint rate which the various carriers, participating in a joint rate, receive as their proportions of the aggregate of the joint rate, are purely a matter of contract between them, with which the shipper has no concern. The division accruing to each participating carrier is ordinarily less than the local rate established according to law, and it goes without saying that it would be an unlawful rebate to permit shipments to be made under such circumstances upon a division of a joint rate which was less than the published local rate applicable to the particular shipment. The law does not require divisions of joint rates to be published. They are purely a matter of private contract between the carriers.

Such private contracts are not for the benefit of shippers and cannot be availed of by them.

Second Natl. Bank v. Grand Lodge, 98 U. S., 123;
Keller v. Ashford, 136 U. S., 610;

Sayward v. Dexter, 72 Federal, 758;

American Bank v. Railway Company, 76 Fed., 130;

Metropolitan Trust Co. v. Topeka Water Co., 132
 Fed., 702;

German Insurance Co. v. Water Co., 174 Fed., 768.

6. *The assignments of error.* The assignments of error, (Rec. 308), while numerous present substantially but two questions, (a) the jurisdiction of the state court, in the advance of any hearing before the Interstate Commerce Commission, and (b) the legality of a private contract for an interstate rate, less than the published rate established according to law.

It is respectfully submitted that the judgment of the Supreme Court of Kansas should be reversed.

SAMUEL W. MOORE,

CYRUS CRANE,

Solicitors for Plaintiff in Error.

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Omaha, Nebraska, via Kansas City, to Texarkana, Texas, the shipments passing over the line of the garnishee from Kansas City to destination. The shipments in all cases were charged for by the garnishee, and paid by Forrester Brothers, *at the published tariff rates.* Forrester Brothers afterwards presented a claim for "overcharges," *in an amount measured by the difference between the published tariff rate, and a less rate alleged to have been fixed by a private contract.* The plaintiff asserts this same claim in this case through the defendants, Forrester Brothers, by virtue of the garnishee process. *The garnishee contended in a court below, and contends here, that the plaintiff's claim is based upon a departure from published tariffs, and for that reason, is for a rebate pure and simple. The court below held that the private contract for less than the published tariff was lawful and enforceable, and rendered judgment accordingly."*

"Prior to August and September, 1901, the garnishee and certain other railway companies had in force a legally established proportional rate of ten cents per hundred pounds on corn and oats from Kansas City, St. Joseph, Atchison and Leavenworth to Texarkana, Texas, and common points, applying on those commodities when shipped from other points into Kansas City, St. Joseph, Atchison or Leavenworth and thereafter moved over the line of the garnishee to Texarkana, Texas, and common points. This tariff applied on shipments of corn and oats from Omaha, Nebraska, and Council Bluffs, Iowa, and other common points taking the same rates, to Kansas City and then shipped over the line of the garnishee to Texarkana and common points, (Rec., 112, 116, 138, 139-140, 144)."

On Page 3 it is said,

"There was a legally established local rate of nine cents on grain from Omaha, and common points to Kansas City. (Rec. 140). There was also a legally established rate of six and one-half cents

between *Omaha and common points, and Kansas City, known as the Missouri arbitrary, which applied on shipments originating at Omaha and common points and coming to Kansas City, for shipment beyond that point.* Rec. 39, 49, 125, 141.)" The Italics are ours.

A number of similar statements are found in the brief of the plaintiff in error. In fact, the entire argument of the garnishee, so far as the validity of the contract of Forrester Brothers is concerned, is predicated on the proposition that the contract of Forrester Brothers was in conflict with a rate lawfully established under the provisions of the Interstate Commerce Act, and for that reason the contract was invalid.

The Supreme Court of Kansas as early as the case of *Hawley vs. Coal Company*, 48 Kan. 593, and again in the case of *Railway Company vs. Hubbell*, 54 Kan. 232, held that any contract in conflict with a lawfully established rate applicable to the shipment in question is invalid and cannot be enforced, and even since the decision in this case in the case of *M. K. and T. R. R. Co. vs. Milling Co.*, cited in 80 Kan. Rep. at Page 141, the Supreme Court of Kansas adheres to its former rule. It will, no doubt, seem at least a little out of the ordinary and worthy of note, that the Supreme Court of Kansas should decide three cases, two before the case at bar and one since the decision in this case, and in all three cases adhere to the rule contended for by the garnishee, and in

this case make an exception, if the facts are as claimed by the plaintiff in error.

The Railroad Company, contended in the trial court that the contract of Forrester Brothers was in conflict with a legally established rate, and for that reason was void. (Rec., 18).

The same contention was made by the Railway Company in the Supreme Court of Kansas, (Rec. 300).

As to whether or not the contract was or was not in conflict with a legally established rate, applicable to the shipment in question, was purely a question of fact to be determined by the trial court from all of the evidence in the case, and, of course, could not be determined by simply taking certain portions of the testimony which were favorable to the garnishee and ignoring all of the other testimony which was before the court. The testimony contains about two hundred and sixty pages, much of which is in regard to the rates between Omaha and common points and Fort Smith or Shreveport, (Rec., from page 20 to page 161).

Section 5891 of the general statutes of Kansas 1909, reads as follows:

"Upon the trial of questions of fact by the court, it shall not be necessary for the court to state its findings, except generally, for the plaintiff or defendant, unless one of the parties request it, in which case the court shall state, in writing, the conclusions of fact found, separately from the conclusions of law."

In construing the above statute, in the case of Shuler, et al, vs. Lashorn, 67 Kan. 699, the Supreme Court of Kansas said,

"They do not show the "factum" of any contract whatever between Asa Shuler and Henry E. Shuler relating to the title of the land, but they expressly state that no such agreement, either oral or written, ever existed. Although not found to be true by the court the attorney for plaintiffs in error assumes all these things, and some others, to be established facts, and to be so material to the case as to require a reversal of the judgment.

At least seven of the specifications of error are based upon matters suggested by fragments of evidence excluded from the findings of fact, but treated as of controlling importance. Forty-six of the fifty-three paragraphs of the brief supposed to be devoted to a statement of essential facts are occupied with detailing specific items of evidence as if they had been found by the court, while the ultimate facts embodied in the findings are ignored. Under these circumstances, in order to arrive at a decision, it is necessary to determine how far, if at all, the findings of fact are conclusive.

This court has no authority to make findings of fact or to canvas evidence for that purpose. Its function is to review alleged errors. When the district court was requested to make findings of fact it was its duty to find the material facts established by the evidence so that exceptions might be taken to its views of the law involved in the trial. (Gen. Stat. 1901, Sec. 4737). Error in this respect will not be presumed but must be affirmatively shown."

Quoting from the case of Cowling vs. Greenleaf 33 Kan. 570, it is said,

"If the plaintiff was not satisfied with the findings of fact, he should have asked the trial court to make further findings or modify those made."

and it is said in *Shuler vs. Lashorn*,

"No motion was made for the modifications of any finding so as to include additional facts, and no request was made for any further or additional findings, and since no rulings upon those subjects were demanded, no errors in those respects can be alleged. Therefore, the plaintiffs in error are precluded from contending that the findings made do not embrace all the essential facts of the controversy established by the proof, and this court is precluded from considering any facts not found by the trial court."

In the case of *Mushrush vs. Zarker*, 48 Kan. 384.

it is said,

"It is earnestly contended by counsel for plaintiff in error that the land levied upon was not subject to sale upon execution; that there had been no abandonment of the homestead, or any portion of it, by the debtor and his family. This involves a question of fact. That question was submitted to the trial court and a general finding was made in favor of the defendants below. We are strongly impressed with the argument of counsel, and are inclined to the position taken by them upon the law of the case, but, unfortunately, the record is in such a condition that we cannot extend relief to the plaintiff in error. We cannot say there was an utter lack of evidence to support the general finding of the court. No special findings were asked or made by the court; so we only have the general finding and judgment of the trial court to guide us. We must adhere to the long-established principles and to the numerous decisions of this court, that the general finding of a court trying the case includes in it every material

fact necessary to sustain it, and that where there is any evidence to support such general finding, a judgment based thereon cannot be disturbed by the Supreme Court.'

In this case the trial court made general findings of fact but made no special findings. The trial court simply found the amount of the indebtedness due from Forrester Brothers to the plaintiff, and the amount due from the garnishee to Forrester Brothers, and rendered judgment according to these findings. (Rec. 284-285.)

No special findings of fact were requested by the garnishee and no motion was made asking the court to make additional findings of fact. (Rec., 284-285).

In the findings made by the trial court no reference whatever is made to any freight rate or whether the same was established or was not established. (Rec. 284-285). No such findings were requested.

The Supreme Court of Kansas had no power to determine questions of fact and could only examine the evidence to ascertain if there was sufficient evidence to sustain the general findings of the trial court, under the cases just cited. The Supreme Court of Kansas in reviewing the evidence of the trial court in this case says:

"The evidence abundantly sustains the claim of the plaintiff that a contract was made for the carriage of grain for Forrester Brothers, as claimed, to-wit: for a joint rate of sixteen and one-half cents, of which the Kansas City Southern agreed to accept eight cents per hundred as its proportion of the rate. This contract is es-

tablished by the officers who made it. There is no controversy in the evidence upon this question. (Rec., 300).

It is also claimed that the Kansas City Southern Railroad had a legally established joint rate in connection with other lines between St. Joseph, Atchison, Leavenworth, and common points, through Kansas City to Texarkana and common points, and its proportion of such joint rate was ten cents a hundred and that this rate was the legally established rate which applied to all freight shipped south over the Kansas City Southern having no legal rate beyond Kansas City, and therefore the Forrester Brothers' grain had to be taken under this rate. For these various reasons, it is insisted that the eight cent rate made for Forrester Brothers was unlawful and void, and that the rate collected was the valid rate at the time.

We can not concur in this conclusion. The facts in the record, taken in connection with the judgment of the trial court, will not sustain this position. (Rec., 301).

The contract as alleged by the plaintiff having been clearly established, the burden was upon the defendant to show by way of defense, that such contract was for some reason unlawful. If the invalidity resulted from the existence of legally established rates with which the rate relied upon by the plaintiff was in conflict, it was incumbent upon the defendant to allege and prove such fact. *Mo. Pacif. R. R. v. Relf*, recently decided by this court;

Atlanta K. & N. Ry. Co. v. Horne, 106 Tenn. 73; 59 S. W. 134;

Southern Pacif. R. R. Co. v. Redding (Texas) 43 S. W. 1061;

Southern Kansas Ry. Co. v. Burgess, 90 S. W. 189. *This was not done.*"

Neither the trial court nor the Supreme Court of Kansas found that there was any established rate in conflict with

the rate given to Forrester Brothers; as that was one of the main questions in issue, and the facts are not found by the trial court and as the Supreme Court had no power to find the facts and as the contention of the garnishee on all of the evidence has not been sustained in the general findings, and as it has been decided in the cases hereinafter cited that on a writ of error to a state court in a law case that this Court will not enter into a consideration of the testimony, we are somewhat at a loss to know just how this court is to find the facts from fragmentary parts of the testimony different from what they were found by the state court.

It was recently stated by this Court in the case of *Water-Pierce Oil Company vs. Tex.* 53 L. ed. U. S. 424.

"Nor does this court sit to review the findings of facts made in the State Court, but accepts the findings of the court of the State upon matters of fact as conclusions, and it is confined here to a review of the questions of federal law within the jurisdiction conferred upon this court."

Quindy v. Boyd, 128 U. S. 489; 32 L. ed. 503; 9 Sup. Ct. Rep. 147.

The findings of a court on questions of fact, where a jury has been waived, are conclusive in the court of review.

Dooley v. Pease 180 U. S. 126; 45 L. ed. 457.

Mixed questions of law and fact submitted to the court in a trial without a jury are not reviewable by the Supreme Court.

St. Louis v. Rutz, 138 U. S. 226; 11 Sup. Ct. Rep. 337; 34 L. ed. 941.

Where the trial below is by the court without a jury, a general finding prevents all inquiry by the Supreme Court in the special facts and conclusions of law in which it rests.

Boardman v. Toffey, 117 U. S. 271; 6 Sup. Ct. Rep. 437; 29 L. ed. 898.

Questions of fact are not federal.

Barket v. Lockwood, 160 U. S. 357; 16 Sup. Ct. Rep. 334; 40 L. ed. 455.

Where the Supreme Court of a state decides a federal question in rendering a judgment, and also decides against the plaintiff in error upon an independent ground not involving a federal question and broad enough to maintain the judgment, the writ of error will be dismissed.

Hammond v. Ins. Co., 150 U. S. 633; 37 L. ed. 1206; 110 U. S. 222; 28 L. ed. 149; 98 U. S. 140; 25 L. ed. 114.

Harrison v. Morton, 171 U. S. 38; 18 Sup. Ct. Rep. 742; 43 L. ed. 63.

There has been no decisions against the validity of a federal statute where the state court simply denies facts sufficient to bring it within its operation.

Crary v. Dublin, 154 U. S. 619; 14 Sup. Ct. Rep. 119; 23 L. ed. 510.

This court has no power to review a state court on a question of fact.

Baslett v. Lockwood, 160 U. S. 357; 16 Sup. Ct. Rep.

334; 40 L. ed. 455.

Min. Co. v. Boggs, 3 Wall 394; 18 L. ed. 245.

THE EVIDENCE.

In the original brief filed in this Court by the defendant in error, we relied on the record and did not enter into consideration of the testimony. The claim of the garnishee that there was a conflict between the contract of Forrester Brothers and the lawfully established rate is not based on any findings of fact made by the State Court, but as an attempt is made to establish this conflict by reference to certain portions of testimony, which were not included in the findings of the State Court, it may not be inappropriate to make a few observations regarding the testimony upon which such contention is based.

But before doing so, it might be well to state a few propositions concerning which there is no dispute.

The Interstate Commerce Act did not fix rates. The Interstate Commerce Act, as it existed at the time of the shipments in question, gave no power to the Interstate Commerce Commission or to the Courts to fix rates. The right to make rates was left with the carriers under the act as it had been before the passage of the Act.

Inter. Commerce Com. v. Cin. N. O. T. P. R. Co., 167 U. S. 479, 17 Sup. Ct. Rep. 896; 42 L. ed. 243;

The Inter. Commerce Com. v. Ala. Midland R. Co., 168 U. S. 144; 18 Sup. Ct. Rep. 45; 42 L. ed. 414;

C. N. O. & T. R. Co. v. Inter. Com. Co., 162
U. S. 197; 16 Sup. Ct. Rep. 666; 40 L. ed. 939.
*Ky. & Ind. Bridge Co. v. Louisville & Nashville
R. Co.*, 2 L. R. A. 289.

The law simply provided that the charges should be reasonable; that there should be no unjust discrimination between shippers under substantially similar circumstances, and the rates fixed by the carriers should be filed with the Interstate Commerce Commission, and published as provided in the Act. It is not contended that a railroad could not have different rates and each rate be a legal rate, and the rate applicable to the particular shipment depend on the character of the shipment, i. e., whether it was a local shipment, a proportional shipment or a joint through shipment over two or more roads.

It is evident from the act itself that these rates, whether local, proportional, joint or through rates, should be made in the first instance by the proper officers of the respective railroad companies, and when so made should be filed with the Interstate Commerce Commission. The rate thus filed became a public document open to inspection and a written instrument in one of the departments of the Government.

The general statute of Kansas, 1909, Sec. 5977, provides:

"Exemplifications from the books of any of the departments of the government of the United States, or any papers filed therein, shall be admitted in evidence in the same manner and with like effect as

the originals when attested by the officer having the custody of such originals."

To prove just what rates were in force at any given time over any particular line of railroad or railroads, should be a very simple matter under the above statute. We submit, however, that the entire evidence in this case does not show either the original or any authenticated copy of any freight tariff or document on file with the Interstate Commerce Commission on either the Northern Connecting lines or the Kansas City Southern Railway, the roads over which the shipments were made. The best evidence of any tariff filed would be either the original or a certified copy of the same. Neither the original or certified copy of any tariff over these roads was offered in evidence. Neither was there any showing made why they could not be produced, or that any attempt had been made to procure a duly authenticated copy of the records of the Interstate Commerce Commission regarding freight rates over these roads. Just what rates were filed with the Interstate Commerce Commission, or just what the records show regarding these rates cannot be determined from examination of all of the evidence in this case for the reason that they are not found in the evidence.

A number of witnesses were asked questions and answered questions concerning the rates between Omaha and Kansas City, and between Kansas City and Shreveport. (Rec. 22, 23, 24, 37, 48, 78, 84, 85, 97, 104, 105.)

From these questions it is quite evident that there were

a number of different rates. Some questions referred to local rates, some questions referred to the sum of the local rates, some questions referred to "Missouri Arbitrary" some referred to the joint through rate over these roads, and some to proportional rates. (Rec. 22, 25, 34, 35, 42, 43, 44, 98, 104, 118.) But whether or not any of these rates or all of them were filed and published in compliance with the Interstate Commerce Law, and just what they would show if these tariffs had been introduced in evidence, cannot be ascertained from an examination of all of the evidence in this case.

If a witness had any personal knowledge concerning a rate, he might detail the facts from which the courts might reach the conclusion, but the witness could not testify to conclusions, such as what rate was the legal rate.

Wabash R. R. Co. v. Sloop, 98 S. W. Rep. 607,
(Mo.); Gulf C. & S. F. Ry. Co. v. Leatherwood,
69 S. W. 119, (Tex.).

But in the absence of a showing that these rates were prepared, filed and published as the law requires, the trial court could not say whether they had been established in compliance with the Interstate Commerce law or not.

The testimony regarding these rates was not free from conflict and it is difficult to ascertain from many of the questions, and from many of the answers, whether they referred to a local rate, proportional rate, or a through rate. Whatever the rates were, was not shown by either the

original or an authenticated copy of the files or records of the Interstate Commerce Commission, or by any witness who claimed to have personal knowledge of these records.

The garnishee did not offer in evidence any schedule of rates between Omaha and Texarkana. It did offer in evidence two amended tariffs which expressly provided that the rates stated therein were "joint proportional rates" and "applying in connection with the following lines," (naming them). (Rec. 111, 116).

In these tariffs no reference whatever was made to the Northern Connecting Lines. Neither was the original tariff, even in the roads included in these amended tariffs, offered in evidence. The garnishee did not rely on these schedules to prove that the rates were applicable to the shipments in question; but undertook to supplement this testimony with the testimony of a number of other witnesses. (Rec. 117, 94-106, 61-75).

It is now suggested that all other testimony regarding rates be excluded, and that these tariffs are the only evidence to be considered, and that it must be concluded from them without any consideration of the other testimony that they are the rates that were applicable.

It is the contention of the defendant in error that as there were no special findings of fact made by the trial court, and no schedule of rates is contained in the facts stated by the Supreme Court, that even if this court

should enter into consideration of the testimony, before it is justified in reaching the conclusion claimed by the garnishee, that it would not only have to find that the tariffs claimed were applicable to the shipment, but also that there was no other legal rate in force between the points of shipment which applied to the shipments in question in this case.

It is our contention that even though the court should find that the rate claimed by the garnishee was a legal rate, (as it did not include the same roads between the same points over which Forrester Brothers' shipments were made,) the court cannot presume that their contract with the Railroad Company was illegal, in the absence of any showing as to what other rates were on file with the Interstate Commerce Commission on these roads, at the time of shipment.

The fact that two or more roads have one joint tariff does not prevent one of the roads from having a different joint rate with other roads, neither does it raise a presumption that it does not have such rate.

Little Rock and Memphis R. R. Co. v. St. Louis, and S. W. R. R. Co., 63 Fed. Rep. 775; 26 L. R. A. 195, and cases cited.

It is suggested, however, that notwithstanding there were no findings of fact made by the trial court, except those found on page 284 of the record, and notwithstanding no mention is made by the findings of the trial court

of any tariff rates, (as might have been done if requested by the garnishee or the parties), it is nevertheless claimed that this defect is supplied by the stipulation found on pages 108, 109 of the record.

The stipulation itself shows that the contention of the garnishee in this regard is not tenable. (Rec., 108, 109). All that the stipulation referred to admitted is that certain exhibits were sent to the Interstate Commerce Commission and filed.

It is expressly stated in the stipulation, that,

"The plaintiff reserves the right to object to the materiality or relevancy of these documents and the plaintiffs do not admit that any of said papers show without further proof any official force and effect in themselves. What they prove, if anything, and their legal effect is not admitted." (Rec., 109).

It was not admitted in this stipulation or elsewhere that the printed papers referred to were the official acts of any officer of any Railroad Company or that they were prepared by such officers, or that there was any joint traffic relations ever made or consented to by the officials of the different roads named in these documents, or that they were ever signed by the officials. It was not admitted that there was any order made regarding their publication by the Interstate Commerce Commission, or if an order was made that the required publication had been made. Besides, the exhibits referred to are not made a part of the stipulation. They are simply referred to in the stipu-

lation. What they contain and their legal effect can only be determined from examination of the evidence in this case. It cannot be determined from the stipulation or from the findings of fact made by the trial court or Supreme Court of Kansas. Neither can the legal effect be determined from the exhibits referred to without an examination of all of the other evidence offered on the trial regarding freight rates.

From a consideration of all of the testimony offered the trial court found against the garnishee on all disputed questions of fact. As there was a conflict of testimony and the burden was on the garnishee to prove its defense, it was the province of the trial court to weigh all testimony and to decide the disputed questions of fact, and the garnishee is concluded as to the facts by the decision of that court.

The authorities cited in the brief of the garnishee to the effect that a contract which conflicts with a lawfully established freight rate is invalid and cannot be enforced, have no application in this case, for the reason that no such findings of fact were made, and the garnishee failed to prove this contention.

We have been unable to find any decision, either State or Federal, which holds that a contract based on an unpublished rate applicable to the rate of shipment in question, cannot be enforced, as between the carrier and

shipper, when the rate is not shown to be unjust and unreasonable or does not discriminate either in favor of or against other shippers on same haul, or does not conflict with a lawfully established rate which is applicable. The validity of such contracts has been upheld in the following cases:

- Mo. Pacif. R. R. Co. v. Reif 78 Kan. 463;
 Wabash R. R. Co. v. Sloop (Mo) 98 S. W. 607;
 Southern Kan. R. R. Co. v. Burgess (Tex) 90
 S. W. 189;
 Gulf R. R. Co. v. Leatherwood 69 S. W. 119;
 Railway Company v. Horn (Tenn), 59 S. W. 134;
 Laurel Cotton Mills Co. v. G. and S. I. R. Co. 37
 Southern Rep. 134;
 Southern Pacif. R. R. Co. v. Redding 43 S. W.
 1061;
 Va. Coal and Iron Co. v. Louisville N. R. Co. 74
 S. E. Rep. 315;
 Cherry v. Chicago and Alton R. Co. 191 Mo.
 489; 2 L. R. A. (N. S.) 695;
 90 S. W. 381;

The principle involved in this case comes clearly within the right to contract recognized by this court.

- Southern Pacif. R. R. Co. v. Inter. Com. Com.
 200 U. S. 555; 50 L. ed. 593;
 Inter. Com. Com. v. Baltimore R. R. Co. 3 Inter.
 Com. Rep. 192;
 Cincinnati and N. O. and T. P. R. Co. v. Inter.
 Com. Com. 162 U. S. 184, 197; 40 L. ed. 935,
 939;
 5 Inter. Com. Rep. 391; 16 Supt. Ct. Rep. 700.

THE DECLARATIONS OF LAW.

It is claimed that the trial court erred in certain declarations of law. These declarations of law do not pur-

port to be based on any findings of fact made by the State Court. They are simply abstract propositions of law submitted to the trial court after the court decided the case. (Rec., 285, 286).

The trial court made no special findings of fact except those found at page 284, 285. Most of the declarations of law do not purport to be conclusions deduced from the facts found by the State Court, but, as we claim, were simply certain abstract principles submitted to the court, and the trial court was asked to state whether this proposition is the law or is not the law, and this without any special finding of the trial court as to whether the propositions complained of were necessarily involved in the case on trial. Besides, these declarations of law were not submitted to the court until after the case was decided by the trial court. (Rec. 286, 287).

It is the contention of the defendant in error that no error can be predicated on any of these declarations of law for the reason that they are simply abstract propositions and passed upon after the case was decided, and do not purport to be legal conclusions deduced from the general findings made by the trial court, no special findings having been made.

In the case of *Milis v Green*, 159 U. S. 651; 16 Sup. Ct. Rep. 132; 40 L. ed. 204, it is said:

'The duty of this court as of every judicial tribunal is to decide actual controversies by judg-

ment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principle or rules of law which can not effect the matter in issue in the case before it."

In the case of *Mayre v. Parsons* 114 U. S. 325, it is said,

"No court sits to determine questions of law *in thesi*."

Where the judgment itself is correct it will not be reversed on an appeal because the court has based its decision on erroneous or insufficient grounds, or has stated no reasons for the decision. 3 Cyc. 291, and cases cited.

The ground on which the court below proceeded is not a subject of inquiry in the Appellate Courts. 3 Cyc. 221, and cases cited. Also *McClug v. Silliman*, 6 Wheat. (U. S.) 598; 5 L. ed. 340.

It is claimed by the garnishee that the trial court erred in these declarations of law because he did not declare the law to be, (1st) that the State Court had no jurisdiction in a controversy between a shipper and a railroad company regarding freight rates, and (2nd), the shipper could not enforce a contract against a railroad company unless it was proved that there were tariff rates on file with the Interstate Commerce Commission corresponding to the contract. In other words, in the absence of any tariff being filed at all, that the contract could not be enforced and that the burden was on the shipper to

allege and prove that the tariff was filed in accordance with the contract before he could enforce it.

We submit that the court did not err in these declarations of law. The trial court held that when there were published rates applicable to the shipments that the only lawful rate that could be applied would be the published rate. (Rec. 287, 288 No. V.)

The substance of all of the other propositions was either that the State Court did not have jurisdiction or the contract could not be enforced in the absence of a rate being filed, even though it did not conflict with any established rate, or was not shown to discriminate in favor of or against shippers, or that it was not unjust or unreasonable in itself.

The vice of declaration No. 2, Rec. 287, is apparent. It would make the lawful rate the published tariff rate although it had never been filed with the Interstate Commerce Commission and established according to law, while it would make unlawful a joint rate that had been agreed upon between the carriers filed with the Interstate Commerce Commission, but which had not been published according to law and would also make it illegal to make a contract if there was no rate filed or published.

**There Was Privity of Contract Between Forrester
Brothers and the Kansas City Southern
Railway Company.**

It is also claimed that the contract of Forrester

Brothers, though valid, cannot be enforced for the reason that there was no privity of contract between Forrester Brothers and The Kansas City Southern Railway Company, and some decisions are cited to the effect that where there is no direct contractual relation between the parties, and there is a contract between two parties for the benefit of the third, that the courts will not enforce such a contract for the benefit of such third party. These cases have no application to this case for the reason that there was an abundance of testimony to show a direct contract between Forrester Brothers and The Kansas City Southern Railway Company, and both the trial court and the Supreme Court so found. (Rec., 284, 285, 300).

The cars were ordered direct by Forrester Brothers from the Kansas City Southern Railway Company and it agreed with Forrester Brothers to furnish them, and it agreed with Forrester Brothers on the amount of freight that they should pay the Kansas City Southern Railway Company as its part of the through haul. This agreement was made through Schaufler first, and afterwards taken up both through the officials of The Kansas City Southern Railway Company and Forrester representatives, and one of the Forrester Brothers direct. (Rec. 21-39 Inclusive, 48, 54, 55, 98 105, 176, 77, 78).

This established a sufficient contractual relation to show privity of contract between the parties and to show a direct liability of the carrier to the shipper on the con-

tract.

Clark v. Ulster and Del. R. Co. 13 L. R. A.
(N. S.) 164;

189 N. Y. 93, 81; N. E. 766; and cases cited.

It is conceded that the carriers might agree on a joint through rate and that the portion that each should receive need not be filed or published with the Interstate Commerce Commission. In this case the carriers not only agreed between themselves on the joint through rate between the point of origin and the point of destination, but each carrier, in addition thereto, agreed not only between themselves, as to the through charge and the amount that each was to receive, but also agreed with the shipper the amount that the shipper should pay to each carrier and where it should be paid. (Rec., 286, 300).

The first carrier kept its part of the agreement with the shipper, the second carrier violated its agreement and charged Ten Thousand Five Hundred and Twenty-seven Dollars and Fifty-five Cents (\$10,527.55) in the aggregate in excess of the amount that it agreed to charge the shippers for its part of the haul. (Rec., 284, 286).

In the absence of any showing why it is legally entitled to this money, it certainly has not been deprived of any right, title, privilege or immunity under the Interstate Commerce Law, and the writ of error, we submit,

should be dismissed or the judgment of the state court affirmed.

Respectfully submitted,

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KANSAS CITY SOUTHERN RAILWAY COMPANY
v. C. H. ALBERS COMMISSION CO.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

No. 18. Argued October 26, 1911.—Decided February 26, 1912.

The insistence in the state court by an interstate carrier that a shipper cannot recover excess collected over a special contract rate because the rate collected conformed to the applicable provisions of the Interstate Commerce Act is an adequate assertion of a right or immunity under that act, and this court can review judgment in favor of the shipper.

On writ of error to the state court this court may examine the entire record, including the evidence, to determine whether what purports to be a finding of fact is not so involved with, and dependent upon, questions of Federal law, as to be really a decision thereof.

In this case the finding of the state court as to a rate charged by an interstate carrier necessarily involved the interpretation and construction of the Interstate Commerce Act, and this court can examine the evidence and ascertain for itself the validity of the rate under the statute.

Posting the schedules of rates of interstate carriers as required by § 6 of the Interstate Commerce Act is a means of affording special facilities to the public for ascertaining the rates actually in force but is not essential to make the rates legally operative.

The sanction by connecting carriers of through rates published by another carrier is only essential as to their application to the haul from common points; rates from other points are individual and not joint.

Where a schedule of joint rates is not restricted to particular lines designated, it will be presumed, where there is testimony to that effect, as applying to shipments received from any connecting line of goods originating at the designated points.

Although the testimony offered may not be the best evidence, it cannot be disregarded if offered and admitted without objection. *Diaz v. United States*, ante, p. 442.

Where there is no applicable through rate established, shipments,

even if moving on through bills of lading, must take the local rates unless displaced by a lawful special agreement.

A special rate agreement which departs from the established local rate for the benefit of a single shipper, no schedule of which is filed with the Interstate Commerce Commission, violates § 6 of the Interstate Commerce Act.

A carrier is not liable to action to refund the excess over an illegal special rate if the rate actually collected is the applicable legal published rate.

79 Kansas, 59, reversed.

THE facts, which involve the right of recovery from an interstate carrier of difference between contract rates and rates actually charged, and the validity, under the Interstate Commerce Laws, of the rates contracted for and collected, are stated in the opinion.

Mr. Cyrus Crane, with whom *Mr. Samuel W. Moore* was on the brief, for plaintiff in error:

The right claimed by the plaintiff in error under the Federal statute is dependent upon the existence and the application of the tariffs filed pursuant to law. This right cannot be defeated by a finding of fact by the state court, either against the existence of the tariff or that it did not apply to the shipments in question. This court has the right to exercise its own judgment, as to whether a tariff was lawfully filed fixing rates controlling all shipments, and whether such rates applied to and controlled the charges upon the particular shipments. *Nor. Pac. Ry. Co. v. Minnesota*, 208 U. S. 583; *Chic., B. & Q. Ry. Co. v. Nebraska*, 170 U. S. 57; *Stearn v. Minnesota*, 179 U. S. 223; *Mobile & Ohio Ry. Co. v. Tennessee*, 153 U. S. 486; *Huntington v. Attrill*, 146 U. S. 657.

Neither the findings nor the rulings of the state court in such matters as these can prevent the determination of the right asserted under the constitution and laws of the United States. *St. Louis Ry. Co. v. Arkansas*, 217 U. S. 136.

The state court was without jurisdiction of this cause.

The lawfully established tariff rates applying on the shipments in question over the line of the garnishee were charged and collected in all cases.

Plaintiff's claim depends upon a departure from the published rates. The inflexibility of published rates must be maintained in every court until the Commission shall, by its order, level the rate for the benefit of every one. *Texas Ry. Co. v. Abilene*, 204 U. S. 426; *Mo. Ry. Co. v. Milling Co.*, 80 Kansas, 141; *Coal Co. v. Lumber Co.*, 159 Fed. Rep. 278; *Van Patten v. Railroad*, 81 Fed. Rep. 545; *State v. Railway Co.*, 176 Missouri, 687; *Carlisle v. Railway Company*, 168 Missouri, 652; *Morrisdale Coal Co. v. Pennsylvania R. Co.*, 183 Fed. Rep. 929.

The plaintiff's entire claim is illegal and non-enforceable for the reason that it is based upon an arrangement whereby the carrier was to serve Forrester Brothers for less than the established rate.

As to the meaning of the proportional rate and how the same is applied, see *Bascom Co. v. Railway Co.*, 17 I. C. C. Rep. 356.

A clear explanation of proportional rates is given by "The Matter of Form and Contents of Rate Schedules," 4 I. C. C. Rep. 701; Moore on Interstate Commerce, § 48; Barnes on Interstate Transportation, § 80 D.

Proportional rates are recognized as proper. *Serry v. Southern Pacific Ry. Co.*, 18 I. C. C. 556; *North Brothers v. Railway Company*, 13 I. C. C. 153; *Kansas City Transportation Bureau v. Railway Company*, 16 I. C. C. 195; *Lindsay Brothers v. R. R. Co.*, 16 I. C. C. 6, and *In re Through Routes and Through Rates*, 12 I. C. C. 164, 172; and see *Armour Packing Company Case*, 153 Fed. Rep. 1; *S. C.*, 209 U. S. 56; *Chicago, B. & Q. Ry. Co. v. United States*, 157 Fed. Rep. 830.

The presumption, in the absence of proof, is that rates between these points had been duly and legally established. *Mecker v. R. R.*, 162 Fed. Rep. 354; *Texas &*

Pacific v. Abilene Co., 204 U. S. 426; *Int. Com. Comm. v. Railway Co.*, 209 U. S. 108, 121; *Clement v. Railway Co.*, 153 Fed. Rep. 979; *American Union Coal Co. v. Railway Co.*, 159 Fed. Rep. 278.

This proportional rate is fixed and inflexible, by reason of its being established in accordance with law, as though it had been fixed by an act of Congress. No contract or other device could vary or depart from it. Any contract undertaking to vary from the published rate would be void. This is conclusively established by the following decisions of this court. *Gulf, Colorado & S. F. Ry. Co. v. Hefley*, 158 U. S. 98; *Texas & Pac. R. R. Co. v. Mugg*, 202 U. S. 242; *Armour Packing Co. v. United States*, 209 U. S. 256.

Other decisions are to the same effect: *Hawley v. Coal Company*, 48 Kansas, 593; *Railroad Co. v. Hubbell*, 54 Kansas, 232; *Kizer v. Railway Co.*, 66 Arkansas, 348; *Armour Packing Co. v. United States*, 153 Fed. Rep. 1; *Railway Co. v. Standard Lumber Co.*, 174 Fed. Rep. 107; *Railroad Co. v. Harrison*, 119 Alabama, 539; *Railroad Co. v. Ostrander*, 66 Arkansas, 567; *Bullard v. Railroad Co.*, 10 Montana, 168; *Railroad Co. v. Swanson*, 102 Georgia, 754; *Southern Wire Co. v. Railway Co.*, 38 Mo. App. 191; *Messenger v. Railway Co.*, 36 N. J. Law, 407; *Scofield v. Railway Co.*, 43 Oh. St. 571; *Fitzgerald v. Railway Co.*, 63 Vermont, 169; *Railway Co. v. Burdick*, 94 Georgia, 775; *Railroad Co. v. Erwin*, 118 Illinois, 250; *Railway Co. v. Bowles*, 1 Ind. Terr. 250; *Gerber v. Railway Co.*, 63 Mo. App. 145; *Railway Co. v. Holmes*, 18 Oklahoma, 92; *Railway Co. v. Stoner*, 5 Tex. Civ. App. 50; *Railway Co. v. Clements* (Tex. Civ. App.), 49 S. W. Rep. 913; *Railway Co. v. Wilcox*, 99 Virginia, 394; *Railway Co. v. Creety*, 5 Ga. App. 424; *Chicago, B. & Q. Ry. Co. v. United States*, 157 Fed. Rep. 830.

There is no pretense that this joint rate was ever published as required by law.

A shipper is not entitled to avail himself of a division of a through rate.

As to a shipper a joint rate is an indivisible unit. The law does not require divisions of joint rates to be published. They are purely a matter of private contract between the carriers. Such private contracts are not for the benefit of shippers and cannot be availed of by them. *Second Natl. Bank v. Grand Lodge*, 98 U. S. 123; *Keller v. Ashford*, 136 U. S. 610; *Sayward v. Dexter*, 72 Fed. Rep. 758; *American Bank v. Railway Co.*, 76 Fed. Rep. 130; *Metropolitan Trust Co. v. Topeka Water Co.*, 132 Fed. Rep. 702; *German Insurance Co. v. Water Co.*, 174 Fed. Rep. 768.

Mr. John M. Wayde and Mr. Philip Pitt Campbell for defendant in error:

State courts have jurisdiction at common law.

This is not an action to in any way regulate commerce among the States, but simply an action to recover on a contract. The common-law right of a state court to hear and determine actions of this kind has never been questioned. *Texas & P. R. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426; *West Virginia Transportation Co. v. Sweetzer*, 25 W. Va. 434; *Peters v. Railroad Co.*, 42 Oh. St. 275; 51 Am. Rep. 814; *Railroad Co. v. Lockwood*, 17 Wall. 379; *McGregor v. Erie Railway Co.*, 35 N. J. Law, 89, 113.

This jurisdiction of state courts has not been abrogated by Interstate Commerce Act. In fact that act says that its provisions are in addition to the remedies at common law.

This action is independent of the Interstate Commerce Act, and is not an action to recover damages by reason of the violation of any of the provisions of that act. *Ratican v. Terminal R. R. Assn.*, 114 Fed. Rep. 671.

That statute is a highly penal one, conferring certain rights upon the party aggrieved, recoverable by him in a civil action, and also subjecting the party offending to its

pains and penalties. *Parsons v. Railroad Co.*, 167 U. S. 447.

The statute does not say that the Federal courts shall be the forum when the liability arises independent of the Interstate Commerce Act. Under substantially similar circumstances as the case at bar, the state courts have retained jurisdiction. *Mo. Pac. Ry. Co. v. Relf*, 78 Kansas, 463; *Wabash R. R. Co. v. Sloop*, 98 S. W. Rep. 607; *Southern Kansas R. Co. v. Burgess*, 90 S. W. Rep. 189; *Gulf R. R. Co. v. Leatherwood*, 69 S. W. Rep. 119; *Ry. Co. v. Horne*, 59 S. W. Rep. 134.

On the facts found by the state court the judgment rendered was not inconsistent with the Interstate Commerce Law.

All that can possibly be claimed on the part of plaintiff in error is that it had a different proportional rate between certain other railroad companies at the time that this grain was shipped to what it had under its joint traffic arrangement with the northern connecting lines, and to its rate specified in its contract with Forrester Brothers.

A railway company can accept a certain rate per hundred pounds as its proportion of a through haul from one railway company and a different rate per hundred pounds as its proportion of a through haul from another railway company.

A railway company cannot relieve itself from the obligations of its contract by failing to comply with the Interstate Commerce Law with reference to filing and publishing its rates, and a contract is not illegal when made with the shipper when it is not shown that the contract rate is in violation of any through rate established by the railroads or is not in conflict with any published rate of the railroads over which the grain is shipped and which is applicable to the shipment. *Little Rock & Memphis Ry. Co. v. St. Louis & Southwestern Ry. Co.*, 63 Fed. Rep. 775; S. C. 26 L. R. A. 195.

Arrangements or agreements by interstate carriers with each other for the through billing of freight, and for joint through rates depend upon the voluntary action of the parties, and cannot be enforced by judicial proceedings without additional legislation. *Little Rock & M. R. Co. v. East Tenn., V. & G. R. Co.*, 4 I. C. C. 261; 47 Fed. Rep. 771; *Little Rock & M. R. Co. v. St. Louis, I. M. & S. R. Co.*, 41 Fed. Rep. 559; 2 I. C. C. 763; *Oregon Short Line v. Northern Pac. R. Co.*, 51 Fed. Rep. 465, 474; 4 I. C. C. 249.

The Interstate Commerce Act does not make it obligatory upon connecting carriers to enter into traffic arrangements for through billing and rating either as to passenger or freight traffic. *Kentucky & I. Bridge Co. v. Louisville & N. R. Co.*, 37 Fed. Rep. 567, 630, 631; 2 I. C. C. 351; 2d Ann. Rep., 2 I. C. C. 510.

If the public interest requires that interstate carriers be compelled to put in force arrangements for through billing and rating, and for the establishment of joint through lines, the statute should be more explicit, and the commission should be empowered to prescribe the terms of such arrangements upon a comprehensive view of the circumstances of each particular case. *Chicago & N. W. Ry. Co. v. Osborne*, 52 Fed. Rep. 915; *Express Cases*, 117 U. S. 1; *Tozer v. United States*, 52 Fed. Rep. 919.

Through rates are matters of agreement between carriers. *L. R. & M. R. R. Co. v. Tenn., Va. & Ga. R. R.*, 3 I. C. C. 1; *Copehart v. L. & N. R. R. Co.*, 4 I. C. C. 3 I. C. C. 278; *In re Clark, Agent*, 3 I. C. C. 649.

Through rates are not necessarily illegal, which, when divided between carriers, give them less than their local rates, provided that the through rate itself is not less than some one of the locals, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which it is imposed. *Lippman v. Ill. Cent. R. R. Co.*, 2 I. C. C.

584; *C., R. I. & P. Ry. Co. v. C. & A. R. R. Co.*, 3 I. C. C. 450; *N. O. Cotton Exch. v. Ill. Cent. R. R. Co.*, 3 I. C. C. 534; *Hamilton v. C. R. & O. R. R. Co.*, 4 I. C. C. 3 I. C. C. 482; *Detroit Board v. G. T. Ry. Co.*, 2 I. C. C. 315; *Poughkeepsie Iron Co. v. N. Y. C. & H. R. R. R. Co.*, 4 I. C. C. 3 I. C. C. 248.

The apportionment of rates of different parts of a through line does not determine the charge to the public, but may be significant on the question of reasonable rates for the whole distance. *Brady v. Penn. R. R. Co.*, 2 I. C. C. 131.

A railroad company is under special obligations to give reasonable rates for its local business, but there are many influences, which may affect through rates, while not bearing upon local rates at all, or, if at all, in less degree. *McMorran v. Grand Trunk Ry. Co.*, 3 I. C. C. 252; and see also *Martin v. C., B. & Q. R. R. Co.*, 2 I. C. C. 25; *Brady v. Penn. R. R. Co.*, 2 I. C. C. 131; *In re Investn. of G. T. R. R. Co.*, 3 I. C. C. 89; *United States v. Mellen*, 53 Fed. Rep. 229.

Through rates are not required to be made on a mileage basis, nor local rates to correspond with the divisions, citing *Martin v. Sou. Pac.*, 2 I. C. C. 1; *Railway Co. v. Osborne*, 52 Fed. Rep. 912. See Wentworth on Interstate Commerce, pp. 18, 24, 54; Judson on Interstate Commerce, p. 190, § 150, citing *Chicago &c. R. R. Co. v. Tompkins*, 176 U. S. 167; *Allen & Lewis v. Oregon R. Nav. Co.*, 98 Fed. Rep. 16.

No power existed at common law, and none is given by the act to court or commission, to compel connecting companies to contract with each other, to abandon full control of their separate roads, or to unite in a joint tariff. *Express Cases*, 117 U. S. 1; *Kentucky Bridge Co. v. Louisville & N. R. Co.*, 2 I. C. C. 351; 37 Fed. Rep. 567; *Little Rock & M. R. Co. v. St. Louis, I. M. & S. Ry. Co.*, 2 I. C. C. 763; 41 Fed. Rep. 559; *Int. Com. Comm. v. Baltimore &*

O. R. R. Co., 145 U. S. 284; *Gulf, C. & S. F. Ry. Co. v. Miami S. S. Co.*, 86 Fed. Rep. 415.

A scheme for establishing compulsory through rates should be surrounded by proper safeguards, and its operation limited by proper restrictions. Cases *supra*; and see *Cincinnati, N. O. & T. R. Ry. Co. v. Int. Com. Comm.*, 162 U. S. 184; *Texas & P. Ry. Co. v. Int. Com. Comm.*, 162 U. S. 197; *Railroad Co. v. Platt* (decided by the Interstate Commerce Commission June 26, 1907); *Sou. Pac. Co. v. Int. Com. Comm.*, 200 U. S. 554; *Int. Com. Comm. v. Baltimore & O. R. Co.*, 3 I. C. C. 192; 43 Fed. Rep. 37; *Cincinnati, N. O. & T. P. R. Co. v. Int. Com. Comm.*, 162 U. S. 184, 197.

Section 6 cannot be construed to prohibit such condition. *Delaware, L. & W. R. Co. v. Kutter*, 147 Fed. Rep. 53.

While contracts which are prohibited by law are invalid and cannot be enforced, there are five exceptions in which the contracts are upheld. Where public policy requires the intervention of the court; where the parties are not *in pari delicto*; where the law which makes the agreement unlawful was intended for the special protection of the party seeking relief; where the illegal purpose has not been consummated; where the party complaining can exhibit his case without relying on the illegal transaction. 9 Cyc. Law & Proc., p. 550; *Packard v. Byrd*, 73 So. Car. 1; *Fox v. Rogers*, 171 Massachusetts, 546; *Eastern Expanded Metal Co. v. Webb Granite Co.* (Mass.), 81 N. E. Rep. 251; *Tootle v. Taylor*, 64 Iowa, 629; *Bemis v. Beecher*, 1 Kansas, 226; *Mason v. McLeod*, 57 Kansas, 105.

To invalidate a contract for illegality, the illegality must be inherent. It is not enough that it be associated even closely. It must be a part of the contract. *Armstrong v. Toler*, 11 Wheat. 258; *Union Nat. Bank v. Matthews*, 98 U. S. 621; *Merchants' Cotton Co. v. Insurance Co.*, 151 U. S. 368; *Larned v. Andrews*, 106 Massachusetts, 435.

The laches of the railroad company in failing to file and publish its joint through rate after it was made should not enable it to defeat its contract or relieve it from liability under its contract. *Railroad Co. v. Hefley*, 158 U. S. 98, distinguished; and see *Virginia Coal & Iron Co. v. Louisville & N. R. Co.*, 37 S. E. Rep. 315; *Cherry v. Chicago & Alton Ry. Co.*, 191 Missouri, 489; Judson on Interstate Commerce on p. 276, § 235; Chapter on Enforceability of Unpublished Rate against the Carrier, citing *Pond-Decker Lumber Co. v. Spencer*, 86 Fed. Rep. 846, reversing 81 Fed. Rep. 277.

The state court did not find that any preference or advantage was given Forrester Brothers, under its contract over that which was given to any other shipper between the same points.

The findings of the state court are conclusive in this court, and while there is no finding of the state court that even the proportional rate with the other roads was filed and published as the Interstate Commerce Law required, yet as the court specifically finds that this grain was not shipped over the same roads or between the same points specified in the proportional tariff offered in evidence in connection with the other roads; and in the amendments to such tariff it is apparent under the authorities already cited in this brief that the proportional rates with other roads, even if filed and published, did not preclude the Kansas City Southern Railway Company from making a different proportional rate with the northern connecting lines.

When the northern connecting lines united on a through rate this new line thus formed was wholly independent of the line formed by the proportional rate between Leavensworth and Atchison and St. Joseph with other roads. *C. & A. Ry. Co. v. United States*, 156 Fed. Rep. 558; *United States v. Standard Oil Co.*, 155 Fed. Rep. 305; *Armour Packing Co. v. United States*, 153 Fed. Rep. 1, were all brought under the Elkins Act, which act did not

take effect until February 19, 1903; the contract of Forrester Brothers was made in 1901, and the shipments were made in 1901 and 1902. These cases do not apply, nor does *Texas & Pacific Ry. Co. v. Mugg*, 202 U. S. 242.

This court will not review a decision of the state court on a writ of error when the decision of the state court is based on a question of state practice or procedure. *In re Spies*, 123 U. S. 131; *Oxley Stave Co. v. Butler Co.*, 166 U. S. 648.

No decision, state or Federal, holds that a contract based on an unpublished rate applicable to the rate of shipment in question can be enforced, as between the carrier and shipper, when the rate is not shown to be unjust and unreasonable or does not discriminate either in favor of or against other shippers on same haul, or does not conflict with a lawfully established rate which is applicable. The validity of such contracts has been upheld in the following cases: *Mo. Pacif. R. R. Co. v. Relf*, 78 Kansas, 463; *Wabash R. R. Co. v. Sloop* (Mo.), 98 S. W. Rep. 607; *Southern Kan. R. R. Co. v. Burgess* (Tex.), 90 S. W. Rep. 189; *Gulf R. R. Co. v. Leatherwood*, 69 S. W. Rep. 119; *Railway Company v. Horn* (Tenn.), 59 S. W. Rep. 134; *Laurel Cotton Mills Co. v. G. & S. I. R. Co.*, 37 So. Rep. 134; *Southern Pacif. R. R. Co. v. Redding*, 43 S. W. Rep. 1061; *Va. Coal & Iron Co. v. Louisville N. R. Co.*, 74 S. E. Rep. 315; *Cherry v. Chicago & Alton R. Co.*, 191 Missouri, 489; 2 L. R. A. (N. S.) 695; 90 S. W. Rep. 381.

The principle involved in this case comes clearly within the right to contract which has always been recognized by this court. *Southern Pacific R. R. Co. v. Inter. Com. Comm.*, 200 U. S. 555; *Inter. Com. Comm. v. Baltimore R. Co.*, 3 I. C. C. 192; *Cincinnati, N. O. & T. P. R. Co. v. Inter. Com. Comm.*, 162 U. S. 184, 197; 5 I. C. C. 391.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This was a proceeding in garnishment under the laws of the State of Kansas. The C. H. Albers Commission Company had recovered a judgment in the District Court of Crawford County, in that State, against Robert L. Forrester and Joseph M. Forrester, doing business as Forrester Brothers, in the sum of \$10,333.72, with interest, and had brought the Kansas City Southern Railway Company into the case, as a garnishee, upon a general allegation that it was indebted to Forrester Brothers. The railway company, which will be spoken of as the garnishee, appeared and denied that allegation. Under the practice in that State the issue so framed was, without other pleadings, brought on for trial as a civil action. The trial was begun before the court and a jury, but later the jury was discharged, with the consent of the parties, and the trial proceeded before the court alone. The case made by the evidence was this:

The garnishee was operating a railroad extending from Kansas City, Missouri, to Texarkana, Texas. Another railroad, which will be spoken of as the northern line, connected with it at Kansas City and extended northward to Omaha, Nebraska. Forrester Brothers were buyers and sellers of grain, with offices at St. Louis, Missouri. In the late summer or early fall of 1901 the two roads, at the solicitation of Forrester Brothers, entered into an oral agreement with the latter whereby they were granted a special rate on corn and oats to be shipped in carload lots from Omaha via Kansas City to Texarkana. The evidence was conflicting as to whether the rate agreed upon for the through haul was $12\frac{1}{2}$ or $16\frac{1}{2}$ cents per hundred pounds, but it was one or the other, and the garnishee was to charge and receive 8 cents for the haul over its road and the remainder was to go to the northern line. The evi-

dence was also conflicting as to whether the agreement was to terminate on the thirty-first of October, or was to continue until all the shipments then contemplated by Forrester Brothers were completed. After the agreement was made, and in reliance thereon, Forrester Brothers made large purchases of corn and oats at Omaha for shipment to and sale at Texarkana, as they had contemplated doing when soliciting the special rate. The agreement was observed by the garnishee until and including the thirty-first of October, and during that time the shipments were carried on through bills of lading. Thereafter the garnishee disregarded the agreement, required that the shipments be rebilled at Kansas City, and collected a 10-cent rate for the haul over its road until November 10, and thereafter a 14-cent rate. The payment of the larger rates was made by an agent of Forrester Brothers at Kansas City, who did not know of the agreement. By exacting the larger rates the garnishee received \$10,527.55 more than it would have received under the 8-cent rate. No schedule embodying the $12\frac{1}{2}$ or $16\frac{1}{2}$ -cent rate, whichever it was, for the through haul, or the 8-cent rate for the haul over the garnishee's road, was filed with the Interstate Commerce Commission; and neither was any memorandum or statement of the oral agreement so filed. Apart from the agreement there was no joint through rate applicable to these shipments.

When the agreement was made there was in force on the garnishee's road a "proportional rate" of 10 cents per hundred pounds on corn and oats moving from Kansas City to Texarkana. This rate was not applicable to shipments originating at Kansas City, but only to such as originated elsewhere on connecting lines. Nor was it invariably confined to the movement from Kansas City to Texarkana, for it included also the haul, when there was such, to Kansas City from certain common points, such as St. Joseph, Atchison and Leavenworth, which usually

enjoyed the Kansas City rates and were not reached by the garnishee's road, but by other roads. Thus, shipments originating on lines connecting at the common points with the roads leading to Kansas City took this rate from the common points to Texarkana. As applied to such shipments the rate was joint as well as proportional, and as applied to others it was a proportional rate of the garnishee alone. It was embodied in a schedule duly filed with the Interstate Commerce Commission, and remained in force until November 10, when it was superseded by a like rate of 14 cents, shown in an amendatory schedule so filed. These schedules bore a heading indicating that they were adopted by the garnishee "in connection with" other designated railroads, they being the roads over which the haul, when there was such, from the common points to the garnishee's road would be made. The northern line was not one of them, nor was Omaha one of the common points. There was a like provision for the haul, when there was such, from Texarkana to common points therewith, and also a designation of the railroads over which that haul would be made; but as that feature of the schedules is immaterial here, it may be eliminated from consideration.

As explaining a proportional rate and indicating the correct application of the one just named, F. M. King, an experienced station agent of the garnishee, testified: "Q. I will ask if you know whether or not the words 'proportional rates' have a well-defined and understood meaning in railroad business and on the Kansas City Southern. A. They have; yes, sir. Q. Now, just tell briefly what those terms mean, those words 'proportional rates,' if you know. A. A proportional rate is a rate put in to cover business . . . coming to our lines from other points, applying to commodities where we have no through rates. It is put in in order to protect a shipper on a long haul. For instance, a shipment coming from . . . points

out in Kansas, where there is no through rate published, . . . we accept it from the connecting line and bill it out then on a proportional rate, which is less than the local tariff rate. Q. Now, you spoke there of a local tariff rate; if those words have a well-defined meaning, I wish you would state what those are. A. A local rate is a rate applying locally from one station to another on the same road. Q. In that term 'local rate' as distinguished from 'proportional rate,' how about the origin of the shipment? A. That is where it originates and terminates on the same line." And E. E. Smythe, the general freight agent of the garnishee, under whose direction the schedules embracing this proportional rate were prepared and filed, testified: "Q. Mr. Smythe, what is meant in railroading by 'common points'? A. Common points are points which take the same rate. . . . Q. Common points are comparatively close together, taking the same rates? A. Yes, sir. Q. How far north is Omaha from Kansas City? A. 220 or 226 miles. . . . Q. How far north from Kansas City is Atchison and Leavenworth? A. Between 30 and 40 miles. Q. And St. Joe about 60 miles north of Kansas City? A. Yes, sir, 60. Q. Is Omaha a common point with Leavenworth, Atchison, St. Joe and Kansas City? A. No, sir. . . . Q. Now, Mr. Smythe, I will ask you to state what is known in railroading as 'proportional rates,' what does that expression mean, if it has any fixed or definite meaning? A. Proportional rates are rates established in a great many centers—grain centers, if you please—on grain coming from any territory which may be shipped there for reshipment. . . . Q. I will ask you if the words 'proportional rates' have a fixed and definite meaning among railroad men, especially among traffic men? A. Yes, sir. . . . Q. Can you give us an illustration so we will understand it more definitely? Give your own illustration of shipments coming into Kansas City and

going out again. A. We will take Wichita, Kansas. Some Kansas City firm will buy hay and grain there from a Wichita dealer, or some point in that territory, and ship that hay to Kansas City to John Jones Commission Co. Mr. Jones pays the freight on that car, and in the meantime . . . he may have sold that car of hay or grain to go to New Orleans, . . . and he accordingly comes to you, or presents to the general agent the expense bill covering the freight in, and when that is checked to see that the correct rate is applied it goes out on a proportional rate from Kansas City or any other point where the proportional rate applies, at the proportional rate named in the tariff. . . . Q. Explain in your own way. A. You want me to explain what that tariff [the proportional one now under consideration] means? What it would apply on? Q. Yes, sir, just explain the meaning of this expression 'in connection with the Chicago Great Western' and the other roads. A. That tariff would apply on grain coming into Kansas City on any railroad in America [and bound] to Texarkana. . . . Q. You say it would apply on grain coming into Kansas City from any point in the world? Yes, sir, any place in America." This testimony, bearing upon the meaning of the proportional rate schedules, was not in any way contradicted.

It was not shown whether those schedules were sanctioned by the other railroads over which the haul, when there was such, from the common points to the garnishee's road was to be made; and while it was shown that those schedules were regularly printed and that copies thereof were sent to the freight offices of the garnishee at Kansas City and other points and were there kept open to public inspection, it was not shown that copies were posted in public and conspicuous places in those offices.

Respecting the existence of an applicable local rate on the northern line from Omaha to Kansas City, the witness Smythe testified: "Q. I will ask you to state if you know

what the rate was in 1901 on grain between Omaha and Kansas City? A. Yes, sir. Q. I will ask you to state what it was. A. The rate was 9 cents. Q. Is that what you call a legal rate? A. It was the legal rate; yes, sir. Q. That is, between Omaha and Kansas City? A. Yes, sir. Q. On what roads was that in effect? A. In effect over the Burlington, Missouri Pacific and all lines reaching Omaha running into Kansas City." This testimony was offered and admitted without objection, and its effect was in no way impaired or qualified, save as the same witness, as also others, testified to the existence of a rate of 6½ cents, called the "Missouri arbitrary," on grain carried from Omaha to Kansas City when destined to points beyond. If this latter was an individual rate of the northern line, and not a conventional division of some joint through rate, as to which the testimony was somewhat uncertain, it was applicable to the shipments in question; otherwise the 9-cent rate was applicable. In either event there was a lawful local rate covering the haul over the northern line.

At the trial the plaintiff took the position, not that the proportional rate was unreasonable, preferential, discriminatory or otherwise objectionable under the Interstate Commerce Act, but that the special agreement was valid and the garnishee consequently was under a common law liability to Forrester Brothers for all that it had collected in excess of the stipulated 8-cent rate for the haul over its road. And the garnishee's position, insisted upon throughout the trial, is reflected by the following declarations of law which it tendered and the court rejected:

"Where an interstate shipment of merchandise passes from the point of origin to the point of destination over the lines of two separate carriers, and such carriers have not, by agreement, established a joint rate over their said lines and filed and published the same in the manner required by the Interstate Commerce Act, then the only lawful charge for transportation to be applied to such

shipment is the published tariff rate of the first carrier from the point of origin of the shipment to the point of connection with the second carrier, plus the published tariff charge of the second carrier from the point of connection with the first carrier to the point of destination.

"On interstate shipments of merchandise the only lawful rates applicable thereto are such rates as have been filed and published in the manner required by the Interstate Commerce Act."

And, applying those declarations to the evidence, the garnishee insisted that during the time of the shipments in question lawfully established local rates, applicable thereto, were in force upon the two roads, and that those rates were not superseded or displaced by the special agreement with the shipper; that the rates agreed upon, that is, the joint through rate and the 8-cent rate, never became legally operative, because never embraced in any schedule filed with the Interstate Commerce Commission; and, finally, that the charges exacted for the haul over its road conformed to the lawfully established rate, and were the only charges which lawfully could have been accepted.

The trial court sustained the plaintiff's position, made a general finding in its favor, and entered judgment thereon against the garnishee. The Supreme Court of the State affirmed the finding and judgment (79 Kansas, 59), and this writ of error was then allowed.

Consideration must first be given to a motion to dismiss, advanced upon two grounds: (1) That no right or immunity under a statute of the United States was "specially set up or claimed," within the meaning of Rev. Stat., § 709, in the state courts, and (2) that in those courts the facts were found generally against the garnishee, that the finding is conclusive upon this court, and that the errors assigned, when rightly considered, but challenge the finding, and therefore present nothing which is open to review.

The first ground obviously is not tenable. The garnishee insisted throughout the proceedings that no recovery could be had against it consistently with the Interstate Commerce Act, because in disregarding the agreement for the special rate and in exacting the proportional rate, first of 10 and later of 14 cents, it but conformed to the provisions of that act governing the rates to be applied to interstate shipments. This was an adequate assertion of a right or immunity under that act, for it named the act, indicated wherein it was claimed to be applicable, and invoked its protection. *Nutt v. Knut*, 200 U. S. 12; *Texas and Pacific Railway Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426.

The second ground has more color, but is also untenable. While it is true that upon a writ of error to a state court we cannot review its decision upon pure questions of fact, but only upon questions of law bearing upon the Federal right set up by the unsuccessful party, it equally is true that we may examine the entire record, including the evidence, if properly incorporated therein, to determine whether what purports to be a finding upon questions of fact is so involved with and dependent upon such questions of law as to be in substance and effect a decision of the latter. That this is so is amply shown by our prior rulings. Thus, in *Mackay v. Dillon*, 4 How. 421, 447, where the state courts had given to certain evidence an effect claimed to be unwarranted by an applicable law of Congress, it was held that their decision "on the effect of such evidence may be fully considered here." In *Dower v. Richards*, 151 U. S. 658, 667, where the conclusiveness of findings of fact by a state court was elaborately considered, it was recognized that where the question is "of the competency and legal effect of the evidence as bearing upon a question of Federal law the decision may be reviewed by this court." In *Stanley v. Schwalby*, 162 U. S. 255, 274, 277-279, which was an action of eject-

ment, the validity of an authority exercised under the United States was drawn in question and depended upon whether the United States had a good title to the land in controversy. That question turned upon whether the attorney for the United States, who had represented it in the acquisition of the land, knew at the time of a prior deed to one McMillan, and the state court found that he had such knowledge. In this court it was insisted, on the one hand, that the finding was conclusive, and, on the other, that the evidence was insufficient, as matter of law, to warrant the finding, and could be examined to determine whether this was so. In that connection this court, although recognizing the general rule that findings upon pure questions of fact are not open to review, said (p. 278): "But so far as the judgment of the state court against the validity of an authority set up by the defendants under the United States necessarily involves the decision of a question of law, it must be reviewed by this court, whether that question depends upon the Constitution, laws or treaties of the United States, or upon the local law, or upon principles of general jurisprudence." And, upon examining the evidence, this court held it to be "wholly insufficient, in fact and in law, to support the conclusion that the attorney had any notice of the previous deed to McMillan," and accordingly reversed the judgment of the state court. And in *Schlemmer v. Buffalo, Rochester & Pittsburg Ry. Co.*, 205 U. S. 1, a case arising under the Federal Safety Appliance Law, wherein the state court found that the deceased contributed to his injury by his own negligence, thereby preventing a recovery, this court exercised the power to examine the evidence, notwithstanding a contention that the finding was conclusive, and reversed the judgment upon the ground that it appeared that what had been found to be contributory negligence was at most an assumption of the risk, which was not a defense under the Federal stat-

ute. Perhaps the most frequent exercise of this power occurs in cases arising under the clause of the Constitution forbidding a State to pass any law impairing the obligation of a contract, the existence of the contract in such cases being a mixed question of law and fact. *Louisville Gas Co. v. Citizens' Gas Co.*, 115 U. S. 683, 697, a leading case upon the subject, contains this statement of the settled rule: "Whether an alleged contract arises from state legislation, or by agreement with the agents of a State, by its authority, or by stipulations between individuals exclusively, we are obliged, upon our own judgment and independently of the adjudication of the state court, to decide whether there exists a contract within the protection of the Constitution of the United States." A like exercise of this power is shown in cases arising under the clause of the Constitution requiring full faith and credit to be given in each State to the judicial proceedings of every other State. *Huntington v. Attrill*, 146 U. S. 657, 684, was such a case. It was a suit in Maryland upon a judgment obtained in New York under a statute of the latter State imposing a liability for the debts of a corporation upon a director making a false certificate respecting its condition. The Court of Appeals of Maryland held that the judgment was for a strictly penal liability and therefore not within the protection of the full faith and credit clause. But when the case came here it was held that "if the state court declines to give full faith and credit to a judgment of another State, because of its opinion as to the nature of the cause of action on which the judgment was recovered, this court, in determining whether full faith and credit have been given to that judgment, must decide for itself the nature of the original liability." And upon reaching the conclusion that in that instance the original liability was not strictly penal this court reversed the judgment of the Court of Appeals of Maryland.

When due regard is had for the rule before indicated, and so often applied in other cases, it does not admit of doubt that in the present case we may examine the evidence, which has been properly incorporated in the record, to determine whether the general finding necessarily involved the decision of questions of law bearing upon the Federal right set up by the garnishee. And when this is done it is manifest, as is amply illustrated by the résumé which we have given of the evidence and contentions of the parties, that the finding necessarily involved the decision of questions of the interpretation and application of the Interstate Commerce Act (24 Stat. 379, c. 104; 25 Stat. 855, c. 382), and also of other questions of law bearing upon the Federal right, such as the legal effect of evidence.

Coming then to the questions arising upon the case made by the evidence, we have seen that when the agreement for the special rate was made, and during the time of the shipments in question, there was in force on the garnishee's road a lawful proportional rate, at first of 10 and later of 14 cents, applicable to these shipments, unless it was objectionable in some of the following particulars:

(a) Although it was shown that the schedules embodying this rate were regularly printed, duly filed with the Interstate Commerce Commission, and kept open to public inspection at the freight offices of the garnishee at Kansas City and other points, it was not shown that copies were posted in public and conspicuous places in those offices as required by § 6 of the Interstate Commerce Act. Posting, however, was not essential to make rates legally operative, and was required only as a means of affording special facilities to the public for ascertaining the rates *actually in force*. *Texas and Pacific Railway Co. v. Cisco Oil Mill*, 204 U. S. 449.

(b) It was not shown that these schedules were sanctioned by the other railroads designated therein, they

being the roads over which the haul to the garnishee's road from the common points was to be made when the shipments were received from connecting lines at those points. Such a showing, however, was not necessary here. The other roads had no interest in the rate as applied to shipments received by the garnishee from the northern line at Kansas City, as were the shipments in question. As applied to them the rate was not joint, but an individual rate of the garnishee. The sanction of the other roads was essential only to its application to the haul from the common points, when there was such.

(c) As before stated, the heading of these schedules indicated that they were adopted by the garnishee "in connection with" other designated railroads, they being the ones just mentioned as interested in the rate when applied to shipments received from connecting lines at the common points. This, it is contended, meant that the rate was applicable only to shipments received by the garnishee from those roads. But an examination of the schedules satisfies us that they had no such meaning. The heading merely reflected the fact that the rate, in some of its applications, was to be a joint one as between the garnishee and the designated roads. The schedules themselves did not restrict the rate to shipments received from those roads, but, on the contrary, indicated that it was applicable to shipments received by the garnishee at Kansas City from any connecting line. This view of it was fortified, unnecessarily, as we think, by the uncontradicted testimony of expert witnesses, who declared that the rate was applicable to shipments originating on any connecting line, whether received by the garnishee at Kansas City or by one of the designated roads at a common point.

The uncontradicted testimony of witnesses likely to be informed on the subject disclosed the existence of an applicable lawful rate on the northern line from Omaha to

Kansas City. True, this testimony was not the best evidence, but, being offered and admitted without objection, it was evidence which could not be disregarded. *Diaz v. United States*, 222 U. S. 574; *Schlemmer v. Buffalo, Rochester & Pittsburg Railway Co.*, 205 U. S. 1, 9; *United States v. McCoy*, 193 U. S. 593, 598. And while it may have been left somewhat uncertain as to which of two such rates, one of 6½ and the other of 9 cents, was the applicable one, it was disclosed with certainty that it was one or the other.

Such being the state of the evidence, the necessary conclusion, as matter of law, is that an applicable and lawfully established local rate was in force on each road. And as it was conceded that there was no established joint through rate, it likewise is a necessary conclusion that the shipments, even if moving on through bills of lading, should have taken these local rates, unless the latter were superseded or displaced by the special agreement.

We are thus brought to the question of the validity of that agreement. Not only did it contemplate a departure from the established local rates for the benefit of a single shipper, but no schedule embracing the rates agreed upon was filed with the Interstate Commerce Commission. Section 6 of the Interstate Commerce Act, as it existed at the time, laid upon every carrier subject to the provisions of the act the duty of filing with the Commission and publishing schedules of the rates to be charged for the transportation of property over its road, provided for changing and superseding such rates by new schedules so filed and published, and made it unlawful for such a carrier to depart from any rate so established and in force at the time. That section also required connecting carriers, agreeing upon joint through rates, to file schedules thereof with the Commission, made similar provision for changing and superseding rates so established, and like-

wise prohibited any deviation from an established joint rate while remaining in force. Other sections contained provisions against unreasonable rates, unjust discriminations, undue preferences and the like. The chief purpose of the act was to secure uniformity of treatment to all, to suppress unjust discriminations and undue preferences, and to prevent special and secret agreements, in respect of rates for interstate transportation, and to that end to require that such rates be established in a manner calculated to give them publicity, to make them inflexible while in force, and to cause them to be unalterable save in the mode prescribed. In every substantial sense local rates and joint through rates were placed on the same level. Both were required to be openly established and uniformly applied. True, the carriers were obliged to establish local rates and were left free to agree upon joint through rates, or not, as they chose; but if they did agree thereon, the rates could become legally operative only by being established as prescribed in the act. The true effect of the statute in this regard—we speak of the statute as it existed in 1901—is clearly stated in the opinion of the Circuit Court of Appeals for the Eighth Circuit, in *Chicago, Burlington & Quincy Railway Co. v. United States*, 157 Fed. Rep. 830, 833, as follows:

“If an initial carrier accepts traffic for transportation and issues its bill of lading over a route made up of connecting roads for which no joint through rate has been published and filed with the commission, the lawful rate to be charged is the sum of the established local rates published and filed by the individual roads; or if, as was the case here, there is a local rate over one road and a joint rate over the others for the remainder of the route, all published and filed with the commission, the lawful through rate to be charged is the sum of the local and joint rates. By failing to establish or concur in a joint through rate for traffic accepted for interstate transporta-

tion, each participating carrier impliedly asserts that the rate which it has duly established, published, and filed for its own line shall be a component part of the through rate to be charged. It is competent for carriers, if conditions justify it, to make their proportions of a through rate less than the local charges upon their own lines, but in doing so they should observe legal methods, and if no action to that end is taken they in effect adhere to the rates established, published, and filed by them as applying not only to local but to through traffic."

We conclude, as matter of law, that the special agreement was void, that the established local rates were unaffected by it, that the rate collected by the garnishee was the applicable legal rate, and that the finding and judgment should have been in favor of, and not against, the garnishee.

To avoid any misapprehension in respect to the character of the liability sought to be enforced in this case, we deem it well to repeat that there was no claim of any right to reparation or damages under the Interstate Commerce Act, and no claim that the rate collected was unreasonable, preferential, discriminatory or otherwise violative of that act, but only an attempt to enforce a supposed liability for a breach of the special agreement. See *Texas and Pacific Railway Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426; *Robinson v. Baltimore and Ohio Railroad Co.*, 222 U. S. 506.

For the reasons given the judgment of the Supreme Court of Kansas is reversed, and the cause is remanded for further proceedings not inconsistent with this opinion.

Judgment reversed.